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Arthur L. H. Street





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AMERICAN FUNERAL LAW

A Manual of Law Affecting Funeral Directors and Embalmers

BY

ARTHUR L. H. STREET

OF THE MINNESOTA BAR



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TRADE PERIODICAL COMPANY

1924

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FOREWORD

For several years, the need has been felt of putting before the funeral directing profession of the United States in compact, readily accessible form, the laws of the various States and other legal information having to do with the care and burial of the dead. Out of this has come "American Funeral Law," which the Trade Periodical Company, and particularly one of its publications, *THE EMBALMERS' MONTHLY*, respectfully dedicates to the profession, feeling in so doing that it is better helping those thus engaged to help themselves in cases where points of law or litigation may develop.

Arthur L. H. Street, the talented author of "American Funeral Law," although he has given the best obtainable, after months of careful research, advises that no funeral director attempt to be his own lawyer, but that when the occasion demands he consult local counsel. However, "American Funeral Law" will give him much enlightenment on subjects he may desire to familiarize himself with, and it is presented with the knowledge that nothing in the way of painstaking investigation or extensive knowledge of the laws involved has been overlooked in its preparation.

As a final word, it may be stated that for years Mr. Street has been Legal Editor of *THE EMBALMERS' MONTHLY*, and that hundreds of persons have sought his good advice, which he has given cheerfully and willingly as a part of the service which that periodical renders to his regular readers.

LEE S. ARTHUR,

Editor *THE EMBALMERS' MONTHLY*.

PREFACE

This book is not offered to funeral directors and embalmers as enabling them to become their own lawyers. On the contrary, we urge the layman to consult private counsel at the first intimation of legal trouble ahead. The great mass of litigation in the courts of the country would be much reduced if lawyers were more frequently employed to avoid entanglements and less frequently regarded as mere untanglers. A dollar spent for timely advice may save several hundred dollars.

First, this volume seeks to acquaint the embalmer and funeral director with legal principles involved in his every-day business dealings, to the end that he may be less apt to infringe upon the legal rights of others and at the same time preserve his own rights. Many of the cases referred to in this book will suggest the thought that more than one funeral director has had occasion for repenting that knowledge of some fundamental rule of law did not come to him in season. A pint of foresight is worth more than a barrel of retrospection.

It is too often assumed, erroneously, that the law consists of a lot of words so confusing as to their meaning that no lawyer or even judge can be sure as to what the law is. At least, this is not true of those branches of the law in which laymen are mainly interested. Rules governing court procedure are not easily understood, but the layman is not concerned with them. Here he must trust to the guidance of a privately employed attorney.

The rules of law which it behooves the funeral director and embalmer to know will be found to be easily comprehended and often entertaining.

Second, it is believed that this work will be useful to the funeral director and embalmer's lawyer in that, apparently, it is the only book extant which brings within the limits of one volume a compilation of all the important court decisions, laws and regulations, affecting the business of caring for the dead from the deathbed to the grave. On these pages the lawyer should readily find citation of court precedents which excusably might be overlooked in the course of a long and diligent search through the very numerous lawbooks which constitute currently used law reports. It will be noted that the book is mainly confined to matters of peculiar interest to funeral directors and embalmers, excluding points of commercial law applicable to business generally.

The citations given facilitate reference to the full text of the decisions noted.

To the end that the book may prove more helpful to the reader, it is contemplated that legal articles by the author appearing in future numbers of *THE EMBALMERS' MONTHLY* will carry appropriate references to section numbers of this volume. In this way the book easily may be kept abreast of future court decisions supplementing or modifying the rules of law stated therein.

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KANSAS	NEW HAMPSHIRE		

**REGULATION OF
FUNERAL DIRECTING BUSINESS**

PART ONE

CHAPTER I

REGULATION OF FUNERAL DIRECTING BUSINESS

SECTION 1. LEGISLATIVE POWER IN GENERAL

The power of state legislatures to regulate the right to engage in the funeral director and embalmer's profession has been involved in several appellate court decisions.

One of the leading cases on this subject is that of the People of the State of New York v. Ringe, 197 New York Reports, 143; 90 Northeastern Reporter, 451, wherein it was decided that the care of dead human bodies and the disposition of them by burial or otherwise is so closely related to the health and general welfare of a community that the business of caring for and disposing of them may be regulated by license and special regulations under the general police authority of the State, and that the legislature can determine that funeral directors shall be subject thereto. But the New York Court of Appeals decided in the same case that a law is an unnecessary and unwarrantable interference with constitutional rights so far as it provides that "a person not already engaged in the business of undertaking shall not engage in such business unless he shall have been duly licensed as an embalmer and shall have been employed as an assistant to a licensed undertaker continuously for a period of at least three years," and requires such person "to make an application to the said board of embalmers' examiners for a license to engage in the business of undertaking," and so far as it further provides that "if a firm or corporation shall desire to engage in the business or practice of undertaking, each member of the firm or the manager of each place of business conducted by the corporation shall be a licensed undertaker" The court justified the power of the State to impose reasonable regulations upon the undertaking business on the ground of the preservation of the public health and prevention of contagion of diseases, and added: "The principal reason for licensing embalmers and regulating the practice of embalming is apparent in the statute which requires embalmers to apply certain tests, as directed, to determine whether life is extinct before injecting any fluid into a body, and to observe the sanitary precautions necessary in connection with the special work of embalming. There is no general statutory provision requiring that a dead human body shall be embalmed, and it is a matter of common knowledge that all dead human bodies are not embalmed . . . The work of the embalmer, in many instances, where the time for the burial or other disposition of the body is postponed or it is to be transported from one town to another, is important, but the duties of boards of health and of embalmers are not necessarily sufficient to fully protect the public interest. The work of the undertaker commences when the work of the physician ends, and continues, notwithstanding the work of the embalmer, until the final disposition of the body. It is to the embalmer that the public must principally look for the enforcement of sanitary rules and regulations." Further on in the opinion the Court of Appeals says: "The work of an embalmer and that of an undertaker can, in most instances, in the interests of economy and that orderly procedure desirable in the performance of such work, be done by the same person, but the public health does not require that an embalmer be an undertaker, or that an undertaker be an embalmer."

In the later case of People v. Harrison, 156 New York Supplement, 679 (affirmed by the Court of Appeals, 114 Northeastern Reporter, 1076), it was decided by the Appellate Division of the New York Supreme Court that a law enacted by the New York Legislature in 1913 was void in requiring a licensed funeral director to qualify through two years' apprenticeship under a funeral director, and did not bear any reasonable relationship to the promotion of public health.

After citing the history of the law before the court, the opinion reads:

"Said section as amended, so far as material to the present inquiry, provides that any person actually engaged in the business of undertaking at the time the amendment took effect, who desired to continue in such business, should on or before the 31st day

of January, 1913, file with the state board of embalming examiners an application as therein provided for authority to do business as an undertaker, that every undertaker who should take into his employ an apprentice should report that fact to the state board within three months, and such other information as might be required by the board, that the board should issue to such apprentice, 'if his character and qualifications are satisfactory, a certificate of registration as a registered apprentice, and that any applicant for a license who was not actually engaged in the business at the time of the enactment of the amendment should present proof in the manner and form required by the board showing that he had served as an apprentice to an undertaker at least two years in the aggregate, that in lieu of the certificate of registration satisfactory proof of practical experience with an undertaker for such period, or any portion thereof prior to the passage of this act, may be accepted by said board,' but that after the 1st of June, 1915, no candidate should be eligible to enter the examination for a license as an undertaker unless his certificate of registration shall have been filed as therein provided, and that the board should issue to applicants passing a satisfactory examination 'in sanitation, disinfection, preparation, and care of human dead bodies for burial or transportation' a license to engage in the business of undertaking. It was further provided that if a firm or corporation should desire to engage in the business of undertaking, at least one member of the firm, or the manager of each place of business conducted by a corporation, should have a license, and that no member of a firm not licensed as an undertaker should perform duties with respect to the care, preparation, and disposal and burial of a dead human body, and forbid an undertaker, firm, or corporation to permit an assistant who was not a duly licensed undertaker or embalmer or registered apprentice to assume the care for burial or transportation of the body of any person who had died of a communicable disease, and forbid any person to practice or hold himself out as an undertaker unless he had complied with the provisions of the section as thus amended or with chapter 498 of the Laws of 1904, as amended by chapter 572 of the Laws of 1905, or of chapter 841 of the Laws of 1911.

"The difference between the provisions of the statute as they existed when *People v. Ringe* was decided by the Court of Appeals and as they were at the time of the commission of the alleged offense, claimed to be material, is the elimination of the provision to the effect that no person could be granted a license as an undertaker unless he held a license as an embalmer, and the amendment of the provision with respect to firms, as already stated, and the substitution for the provision requiring three years' consecutive service as an apprentice of the provision requiring two years' service in the aggregate in that capacity.

"It is contended on the part of the people [prosecution] that these changes in the law fully meet the criticism of the Court of Appeals in *People v. Ringe*, supra. I am of opinion that they do not. The statute still requires that the requisite skill and knowledge shall be obtained in a particular manner, to wit, by service as a registered apprentice for at least two years in all cases where the application for a license is made after June 1, 1915, and service as a registered apprentice for two years, or practical experience with an undertaker, prior to the time the act as thus amended took effect, acceptable to the board in lieu of such service as a registered apprentice, where the application for a license is made on or prior to June 1, 1915. It was, as the Court of Appeals declared in *People v. Ringe*, supra, competent for the Legislature to regulate the business of undertaking and to subject undertakers to an examination and to require that they obtain licenses, but I am unable to perceive any theory upon which the public health or welfare requires, as a condition precedent to carrying on the business of an undertaker, not involving the embalming of dead bodies, service as a registered apprentice with an undertaker for a period of two years. The public health and welfare may require, as the Legislature has required, an examination of applicants for such licenses with respect to sanitation, disinfection, and the preparation and care of bodies for burial or transportation, and the examination might well be extended to the laws and health regulations applicable to the care and interment of the dead, depending upon the cause of death, but it is, I think, manifest that the knowledge essential to qualify one to enter an examination for a license as an undertaker might be acquired in a medical or other school for such purpose, or by special training and observation, without actually serving as an apprentice, and in any event the requirement of two years' service in such capacity is unreasonable.

"The statute in its present form is subject to the criticism that it aims at the undertaking business rather than at those conducting funerals, for it does not require that funerals shall be conducted under the immediate supervision of a licensed undertaker, and plainly contemplates that they may be conducted by his employees, who are not even registered apprentices, excepting in the case of funerals of those dying of a communicable disease, and in such cases the registered apprentice is authorized to assume

the care and preparation of the bodies for burial or transportation, although he has been subjected to no examination and has obtained no license, and he may perform these duties as his first acts as an employe or apprentice of an undertaker.

"The learned Deputy Attorney General draws attention to the fact that a bill designed by the Legislature to overcome the objections presented by the decision of the Court of Appeals in *People v. Ringe*, supra, was vetoed by the executive on the authority of that decision shortly before he signed the amendment to section 295 enacted in 1911, and that the section was further amended in 1913, as indicating due deliberation on the part of the Legislature and the executive, and an effort to enact the law in the interests of public health and welfare, and he rightly contends that every reasonable presumption must be indulged in in favor of the validity of the statute. Nevertheless it does not appear that there was any legislative investigation on the subject or that the Legislature had before it evidence tending to show that the public health or welfare would be promoted by such legislation; and since the enactment is an encroachment upon the right of the individual to engage in a lawful business, it must have some apparent relation to the public health or welfare to warrant its enactment. . . . I am of opinion that no prosecution for engaging in the business of an undertaker without a license can be sustained under the provisions of this section, for if the provisions with respect to the apprenticeship are unconstitutional, there remain nothing but the provisions requiring that those engaged in the business at the time the act took effect shall obtain a license, and it is not to be presumed that the Legislature would have enacted the provisions requiring only those then engaged in the business to procure licenses, for that would be an unjust discrimination, and it is manifest that all provisions of the section are connected and dependent upon one another, and were designed to accomplish the purpose of requiring all engaging in *business* as undertakers to procure licenses, and therefore, some of the provisions being unconstitutional, the entire enactment must fall."

The same reasoning was adopted by the Massachusetts Supreme Judicial Court in the case of *Wyeth v. Cambridge Board of Health*, 200 Mass 474; 86 Northeastern Reporter, 925. This is the substance of the Massachusetts decision: The refusal of the board of health to grant a license as a funeral director to one who is shown to be qualified in other respects for the occupation, solely for the reason that he is not licensed as an embalmer, is illegal, and, where it appears that the license, except for that reason, would have been granted, a writ of mandamus will be issued ordering the board of health to issue the license. A rule made by a board of registration in embalming that "no permits for removal, burial or disinterment shall be issued by boards of health, city or town clerks or selectmen of a town, or any other person authorized to issue burial permits, to any person or persons who have not been registered and received a certificate from the State Board of Registration in Embalming," is invalid as constituting an unreasonable interference with the right to pursue a lawful vocation. The court said that the power of the legislature to exercise complete control of burials so far as necessary for the promotion of the public safety could not be questioned, but doubted the validity of a statute which attempts to forbid issuance of a burial permit except to a person who has received a certificate as a registered embalmer. In this case it was sought to sustain the regulation on the ground that a funeral director who is an embalmer is more apt to discover that a deceased person died of a contagious disease than a funeral director not an embalmer, but the court said: "No evidence is furnished that, through his knowledge of the business of embalming, one can form an opinion which an ordinary undertaker of experience could not form of the cause of death of a person whose body is seen by him. But, if there may be some slight increase of knowledge, from this source, to one preparing a human body for burial, its relation to the public health, if any, is too remote to be made a foundation of legislation or regulation."

But in case of *Commonwealth v. Goodrich*, 13 Allen Reports, 546, the same court upheld a regulation of a municipal board of health prohibiting all persons, except the superintendent of a cemetery or a duly appointed undertaker or other person specially authorized, from removing the dead body of any person from any place within the city to the place of burial, and requiring from each undertaker a bond to collect and account for all burial fees, although the regulation may have been adopted with special reference to a particular person.

The validity of an ordinance requiring permits to be taken out for the burial of the dead is recognized in the case of *Yeadon v. White*, 36 Pa Superior Court Reports, 360.

A law requiring funeral directors to hold embalmers' licenses is invalid, according to the holding of the Wisconsin Supreme Court in the case of *State v. Whyte*, 188 Northwestern Reporter, 607. It was decided that a Wisconsin act making such requirement did not have such relationship to public health or welfare as to be supportable as a valid exercise of the police power. Omitting the statement of facts, the opinion of the court reads as follows.

"It is argued by the appellant that the words 'undertaker' and 'embalmer' are used synonymously in the statute, that both may be regulated and licensed, that the practice of embalming has become practically universal, and that the public interest is promoted by the statutory regulation of undertakers. If it be conceded that the words 'undertaker' and 'embalmer' are used interchangeably, then it follows that an undertaker cannot carry on his business as such without an embalmer's license; and, if they are not used interchangeably, it likewise follows that an undertaker must have an embalmer's license before he can conduct an undertaker's business. So the question is presented. Can the Legislature require an embalmer's license from an undertaker as a condition for pursuing the latter calling? For the purposes of the present case it will be assumed that both undertakers and embalmers can be required to be licensed under reasonable regulations. But the precise question for determination is whether the business of an undertaker is so like unto or identical with that of an embalmer as to permit of them being put under one classification, so that one cannot be an undertaker without also being an embalmer. The statute itself defines embalming as:

"The disinfection or preservation of the dead human body, entire or in part, by the use of chemical substance, embalmer's fluid or gases on the body, or by the introduction of the same into the body, by either arterial or cavity embalming or by hypodermic injection of fluid ordinarily used for embalming."

"If we turn to dictionaries, we find that the Century defines an undertaker as 'one whose business is to make preparations for the burial of the dead and manage funerals,' Webster's International as 'one whose business is to prepare the dead for burial and take charge and management of funerals,' and the Standard as 'one whose business it is to arrange for burying the dead and to oversee funerals.' It is apparent from these definitions of an undertaker and the statutory definition of embalming that the two are vitally different. An embalmer, as such, does not bury the dead, he does not take charge of funerals, he does not dress the body, procure the coffin, or do the many other things that an undertaker does. His sole function as an embalmer is to so treat the body by means of chemical substance, embalmer's fluids, gases administered either externally or internally, or both, so as to disinfect and preserve the body. Embalming is not required by any law of the state. It is not essential to public health, safety, convenience, or comfort under present conditions of burials and cremations. It is not universally practiced, especially in rural communities. Just what proportion of buried bodies are embalmed in the state there is no evidence to show. But it is a matter of common knowledge that the number of unembalmed bodies annually buried in this state is large. Some have religious scruples against embalming because it mutilates the body of man, made in the image of God, just as others have religious scruples against cremation.

"Since embalming is not compulsory, since it is not universally practiced, why require every undertaker to have an embalmer's license before he can bury the dead? The qualifications required for obtaining an embalmer's license would add nothing to his fitness for burying an unembalmed body. It would add nothing to public health, safety, convenience, comfort, or morals. A police regulation, restricting to the extent of prohibition an ancient, honorable, and necessary calling, must justify its validity on the ground that it is essential to the public health, safety, convenience, comfort or morals. This statute has no such sanction. It was beyond the power of the Legislature to make it a valid enactment. *State v. Redmon*, 134 Wis. 89, 114 N. W. 137, 14 L. R. A. (N. S.) 229, 126 Am. St. Rep. 1003, 15 Ann. Cas. 408. As was aptly stated by the Supreme Court of Massachusetts in *Wyeit v. Board of Health*, 200 Mass. 479, 86 N. E. 927, 23 L. R. A. (N. S.) 147, 128 Am. St. Rep. 439, decided in 1909.

"Except in those cases where embalming is desired for a special reason, we know of nothing connected with the duties of an undertaker that calls for the work of a licensed embalmer. When such work is desired, a proper person can be procured to perform it. In cases generally, it is not an essential part of the duties of an undertaker and it has no relation to the public health."

"The same view is also held by the Court of Appeals of New York in *People v. Ringe*, 197 N. Y. 143, 90 N. E. 451, 27 L. R. A. (N. S.) 528, 18 Ann. Cas. 474, decided in 1910, and by the Court of Appeals of Maryland in *State v. Rice*, 115 Md. 317, 80 Atl. 1026, 36 L. R. A. (N. S.) 344, Ann. Cas. 1913A, 1247, decided in 1911.

"The provision of the statute that 'any undertaker or funeral director who on January 1, 1921, was engaged in the undertaking business shall be licensed by the state board of health without examination,' is specially void for the reason that a person engaged in one kind of business, an undertaker, that bears no necessary relation to the qualifications of another business, an embalmer, is declared qualified for the latter. As has already been pointed out, an undertaker as such does not have to understand embalming. But the Legislature said he must understand embalming, and then it said that, if he was an

undertaker on January 1, 1921, he was conclusively presumed to understand embalming, though he may not have been in the undertaking business but a single day, namely, January 1, 1921. Such attempted classification bears no relation to the subject-matter, and is void. It is first a declaration that something more than knowledge of the undertaking business is required, and then a declaration that this is not true—that not even a knowledge of the undertaking business is required, but merely the fact that the applicant for a license was in that business on a certain day. If the statute were one providing for an undertaker's license as an undertaker, and it declared that those who were in that business on a certain day, and had been in such business for a specified reasonable length of time, should be entitled to a license as an undertaker without examination, an entirely different question would be presented. In such case a presumption would arise that the prosecution of a business for a certain length of time would qualify one for a continuance in that business. But we have here no such case.

"We concur in the trial court's opinion, where he says:

"It is apparent from examination of chapter 464, Laws of 1921, when viewed in the light of statutes in force when this Act was passed, that the single purpose of the Act was to require that all undertakers, funeral directors or embalmers should secure an embalmer's license before they pursue their occupation, and that the Legislature intended that all provisions of the Act should be carried into effect as a whole and that each of the various provisions of the Act were the inducement to and the compensation for the balance of the law. It follows that all of the provisions of chapter 464 must be held unconstitutional and void. It also follows that the attempt to repeal the law that existed before the passage of this Act was ineffectual and that relator's rights must be tested by the statutes as they existed prior to the passage of this Act. Under these prior statutes undertakers were not required to procure licenses. The reference in section 1409-10 to the revocation of the license of an undertaker seems to have resulted from the careless use of words, as no statute provides for the issuing of such a license."

One of the leading authorities on the constitutional proposition that knowledge of the science of embalming cannot be made an essential qualification to engage in the business of funeral directing is the decision of the Maryland Court of Appeals in the case of *State v. Rice*, 80 Atlantic Reporter, 344. Referring to a statute which was held to be invalid on that ground, the court said, in part:

"It is fair to assume that the purpose of this requirement is that he should acquire a knowledge of the business of embalming as well as that of undertaking, and when the statute provides that 'upon examination it is found that the applicant has been employed two years prior to his application by a person, firm, or corporation actively engaged in the work of practical embalming and undertaking, and is possessed of skill and knowledge in said business,' it would seem that the proper construction of that language would be that they are upon examination to find that he has been so employed, for the length of time required, in the work of embalming and undertaking, and that he possesses the skill and knowledge of said business—embalming as well as undertaking.

"It is true that in the original act the skill and knowledge required were solely confined to that of undertaking, and that the business of undertaking was frequently referred to therein as 'said business,' but upon the introduction into the law, by section 8, Acts 1904, of this additional requirement or qualification of the applicant, the words, 'said business' following so closely after this requirement, wherein embalming was introduced, have reference, as we think, to the business in which his employer was engaged, and in which he was required to serve, that is, the business of embalming and undertaking. In our opinion the word 'work' in the clause referred to is there used synonymously with the word 'business,' and in construing this act should have that meaning. If so, the statute would read that the applicant has been employed for at least two years prior to said application, by some person, firm, or corporation actively engaged in the 'business' of practical embalming and undertaking, and is possessed of skill and knowledge of said business.

"But, should the state be correct in its contention, even then we think it places upon the applicant a burden or condition that he should not be required to assume. If he is not to be subjected to an examination to ascertain his skill in both embalming and undertaking, he nevertheless is required, as a condition precedent to his obtaining his license as an undertaker, to give two years of his services in a work or business which is separate and independent of the business of undertaking, and not necessarily incident thereto, and the statute would be invalid even under this construction, for the reasons hereinafter stated. It is true that the statute now before us does not in so many words require that the applicant shall have a license for embalming, but it does require that he shall have been employed for at least two years in the work of embalming, and shall be possessed of skill and knowledge in embalming, and the board shall so find before

he can obtain a license as undertaker. Therefore, in effect, the statutes are similar.

"The requirements that the applicant for license shall be possessed of skill and knowledge in undertaking as well as of reasonable knowledge of sanitation, preservation of the dead, disinfecting the bodies of deceased persons, apartments, clothing, and bedding in cases of death resulting from infectious or contagious diseases, are all within the proper exercise of police power, because of their relation to public health, but as the requirement made of the applicant by section 8, chapter 160, Acts 1902, as amended by the Acts of 1904 and 1908, that he shall be possessed of skill and knowledge in the business of embalming, has no relation to public health, or to public morals, public safety or the welfare of the public, said section 8, as amended, is in violation of both the 14th Amendment of the Constitution and the twenty-third article of the Declaration of Rights of Maryland, which protect the liberties, privileges, and rights of citizens against undue legislative interference."

A statute, regulating the business of funeral directing, by requiring those engaging in it to qualify by showing their knowledge of undertaking, of sanitation, of the preservation of the dead, and of disinfecting the bodies of deceased persons, apartments, clothing and bedding, bears a reasonable relation to the public welfare and the preservation of the public health, and is constitutional, held the Maryland Court of Appeals in the case of *Keller v State*, 90 Atlantic Reporter, 603. In the course of its opinion, the court said:

"By section 7, chapter 160 of the Acts of 1902, it is provided, that all persons, firms and corporations, and their assistants and employees, as therein provided, engaged in the business of undertaking, and before any member of any such co-partnership, assistant or employee of any such person, co-partnership or corporation, or officer of such corporation whose duties would engage him or her in the care, preparation, disposition or burial of the dead, should discharge the duties of such business, employment or office; and before any of those named in the preceding section [section seven] who were engaged in the said business or employment at the time of the passage of the Act and who failed to register within the time named in the last preceding section, should continue in said business, they should apply to the Board of Undertakers for a license to practice such business and employment, and should the board find, upon examination, that the applicant is of good moral character, possessed of skill and knowledge of such business and has a reasonable knowledge of sanitation, preservation of the dead, disinfecting the bodies of deceased persons, apartments, clothing and bedding, in case of death resulting from infectious or contagious diseases, the board should issue to said applicant, upon the payment of a fee of twenty dollars, a license to practice the business of undertaking. It also provided that licenses should issue to corporations when applied for and that one license should suffice for all the members of a co-partnership when issued in the firm name.

"The real objections to the act appears to be:

"First. Because it creates arbitrary and unreasonable classifications, in that it provides (a) That one license shall suffice for all the members of a co-partnership when issued in the firm name. (b) That assistants and employees of undertakers shall pay the same license fee, and have the same skill and knowledge as the undertakers employing them. (c) That licenses shall be issued without charge to corporations upon application.

"Second. Because its provisions are uncertain and cover occupations outside of the sphere of the police power.

"It is true that under the provisions of the act, a corporation pays nothing for a license and that one license suffices for a co-partnership, provided it is issued in the firm name, while every individual in order to secure a license must pay the sum of \$20.00. Every individual, however, is on a footing of equality, and the opportunity to form a corporation or a co-partnership is open to all. There is, therefore, no discrimination that can fairly be said to be unreasonable or unfair.

"In order to secure a license, the same requirements as to knowledge, character and experience are enforced in the case of each and every applicant, without any exception or qualification whatsoever, irrespective of whether the applicant is an officer or employee of a corporation, a member of a co-partnership or an employee thereof, or an individual in business for himself or an employee of such individual.

"The classification provided, by the statute in question, we think, is based upon reasonable grounds, and is founded upon the right of the state, in the exercise of its police power, to regulate and protect the health and general welfare of the community.

"Under the statute now before us, and as it now stands, a person is not required in order to secure a license, to qualify as an embalmer. The test relates to knowledge of undertaking, of sanitation, preservation of the dead, and disinfecting the bodies of

deceased persons, apartments, clothing and bedding in case of death resulting from infectious or contagious disease

"There can be no doubt, we think, that such requirements bear a close and reasonable relation to the public welfare, and to the preservation of public health. They are in themselves fair and reasonable and impose no restraint which may not be complied with by reasonable experience, and does not violate in any sense the constitutional rights of the traverser" [defendant].

SECTION 2 TYPICAL STATUTORY PROVISIONS

As showing the present trend of legislative policy in the matter of requirements as to qualifications of those engaging in the practice of embalming, see the summary of the provisions of the embalmers' licensing law enacted in Indiana in 1923, appearing in Part II of this book under the head of "Indiana."

In several of the laws or regulations relating to the licensing of embalmers, "embalming" is defined as follows:

The term "embalming" shall be taken to mean the disinfection or preservation, or both, of dead human bodies, entire or in part, by the use of chemical substances, fluids or gases used, prepared or intended for such purposes, either by outward application of such chemical substances, fluids or gases on the body, or by the introduction of same into the body by vascular or hypodermic injection, or by direct application into the organs or cavities. The finding of any such chemical substances, fluids, or gases ordinarily used in embalming, or any trace, evidence or appearance thereof upon a dead human body, the use of which is prohibited except by licensed embalmers, or the placing thereof on a dead human body by any person who is not a holder of an embalmer's license, except as herein above permitted, shall constitute prima facie evidence of the violation of the law and these rules and regulations."

See, also, the briefer definition contained in the new Indiana law in Part II of this book.

In at least one state (Kentucky), "undertaking" and "experience in undertaking" have been defined by statute, in providing for the licensing of undertakers. The definitions are as follows:

"Any person not a duly licensed undertaker or a duly licensed embalmer, as provided in Section 2a of this rule, practicing or attempting to practice undertaking, except under the immediate and personal direction of a licensed undertaker, as provided in Section 2a of this rule, shall be considered practicing undertaking. The term "undertaking" shall be taken to mean any service whatsoever, connected with the management of funerals, the cleansing, dressing or preparation of dead human bodies for burial; the sanitation and infection of premises, clothing, bedding and all articles subject to contagion or infection, or both; or any service or act connected with the management of funerals or the care or preparation of dead human bodies from time of death until the final disposition of such body or bodies by burial or otherwise, and the finding of any chemical substance, fluids or gases used in disinfecting premises or articles, or any trace, evidence or appearance thereof in or about the premises or on the articles therein contained and used by any person who is not a duly licensed undertaker, or by such persons as herein above stated to practice undertaking, shall constitute prima facie evidence of the violation of the law and of these rules and regulations."

"A duly licensed embalmer or any person who shall have been employed as an assistant to a licensed undertaker or undertakers for a period of two years in the aggregate, or been engaged in the business of an undertaker for two years in the aggregate, and had the experience and instruction in the management of funerals and the care and disposition of dead human bodies, dead of infectious or non-infectious, contagious or non-contagious, communicable or non-communicable disease, and the sanitation and disinfection of premises, clothing, bedding and all articles subjected to contagion and infection as may have been incidental to said licensed undertaker or undertakers' ordinary business will be considered by the board to have had the experience as required by the Law and these Rules and Regulations."

The laws creating embalmers' examining boards usually provide for removal of members by the appointing power for neglect of duty, incompetency or improper conduct.

In no instance is the compensation allowed members so large as to make appointment to such boards attractive from a pecuniary standpoint. A moderate per diem and actual traveling expenses is usually allowed, with limits in some states as to the maximum number of days that may be charged for. Honor and a consciousness of serving one's profession are the chief incentives to accepting or seeking appointment.

Embalmers' licensing laws usually contain some such provision as this: "Nothing in this chapter shall apply to or in any manner interfere with the duties of any officer

of local or state institutions, nor . . . to any persons engaged simply in the furnishing of burial receptacles for the dead and burying the dead but not embalming."

Regulations in force in some of the states forbidding use and sale of embalming substances containing arsenic, and similar poisons, are clearly supportable as measures tending to prevent concealment of the cause of deaths resulting from criminal poisoning

SECTION 3 VALIDITY OF BOARD RULES

A statute authorizing a State Board of Embalmers to make rules, not inconsistent with the laws of the state or of the United States, regulating the embalming of dead human bodies, and to conduct examinations, to issue licenses to qualified persons, etc., authorizes a rule for revoking licenses for breaking valid rules of the board. It was so held by the Kansas Supreme Court in the case of *Miller vs Johnson*, 202 Pacific Reporter, 619. But it was held that a rule of the board was unreasonable and void under the following stated circumstances:

A citizen of Geneseo, Kansas, died in a hospital at Little River. His death was not the result of a communicable disease. His relatives requested the plaintiff, a funeral director, to bring home the dead man's body. He complied, bringing home the body in an automobile hearse, over the highways of a rural community, a journey of 15 miles. He disregarded a rule of the state board of embalmers which would have required that, before bringing home the dead body, he should have embalmed it and waited thereafter for 12 hours, and he should have procured a removal permit from the local registrar of embalmers at Little River, and should have tagged the dead body with a yellow paster furnished by the state board. In consequence of the breach of this rule, the plaintiff's license as an embalmer was revoked. The court held that this rule, as interpreted by the state board and as applied to the facts outlined above, was unreasonable and void, and that the plaintiff was entitled to reinstatement as a licensed embalmer.

The court said:

"Why all this red tape to bring a dead man home from a hospital 15 miles away, over the rural highways of an agricultural community? Thus interpreted, the dead man's father, brothers, or sons would likewise have violated the law and incurred a fine of \$50 to \$200 if they had dispensed with the services of the local undertaker and had brought the dead man home themselves. Thus interpreted, if a farmer died out in the pasture of his own farm, his sons could not carry him to the house and let him lie on his own bed, while they went to town for a coffin, until he had been embalmed 12 hours—out in the pasture—and labeled and tagged with a yellow paster!

"Our official reports are replete with decisions showing it to be the uniform and consistent policy of this court to uphold all the reasonable rules, regulations, orders, and decisions of the many official and administrative boards with which the state has equipped itself for the proper discharge of all its governmental concerns, but our duty to declare a rule of an official board to be unreasonable cannot be avoided if it is plainly subject to that objection, or if the rule, reasonable in itself, is given such an unreasonable interpretation as to bring about such a fatuous and exasperating result as the one here presented.

"For the purposes of respectful treatment and decent interment there is vested in the relatives of a dead person, primarily in his next of kin, a quasi-property interest in the body of the deceased . . . and what the relatives might do themselves they might lawfully authorize the plaintiff to do for them. While the transportation of dead bodies for considerable distances, or by rail, or through populous centers where there is danger of infection or contagion, and the like, wherever the public health or safety may demand it, may be properly subjected to reasonable rules of some official body like the state board of health or the state board of embalmers, yet the rule applied here—requiring Mr. Archibald's body to be embalmed for twelve hours, and to be tagged with a yellow paster, and that a permit for its removal be obtained, etc., before it could be brought home—was clearly unreasonable and was an undue interference with the rights of the relatives of the deceased and of the plaintiff, their employee. Disregard of such an unreasonable rule gave no just ground to cancel his license to practice his profession. He should be reinstated."

SECTION 4. REGULATING RENEWAL OF EMBALMERS' LICENSES

A decision of the Missouri Supreme Court upholds the validity of a rule of the State Board of Embalming, requiring licensed embalmers to appear for re-examination and to pay a \$10 fee, on their failure to renew their licenses within proper time. The

statutes and regulations of the state governing renewal of such licenses are held to impose no unreasonable burden on those seeking to engage in the embalming profession.

In this case (State on Relation of F. J. Bigham et al vs J. T. Williams and others, members of the State Board of Embalming, 250 Southwestern Reporter, 44), it appeared that the relators (applicants for a writ of mandamus against the board) were licensed embalmers at Neosho, Mo., prior to April 30, 1922.

On May 22, 1922, they sent to the secretary of the state board of embalmers a check for \$6 to renew their license, which had under the statute expired April 30, 1922. The fee was returned to them by the secretary, with the statement that their license had expired May 1st, and a renewal of same required a re-examination and the payment of a fee of \$10. Later the secretary notified relators that the board would meet at the Baltimore Hotel, in Kansas City, June 26, 1922, "for the benefit of those whose license had been annulled through failure to renew the same within the time specified by law," and that a return of their application filled out and accompanied by a \$10 fee would indicate that the relators would attend for examination. The relators notified the secretary that they would not attend, and again submit to an examination. To this was added a comment upon rule 6 of the board's regulations and a request that its action be reconsidered and that relators be permitted to pay the renewal fee required upon a timely application therefor. This communication was not answered, and thereafter the board did not recognize the relators as licensed embalmers.

Rule 6 of the regulations of the board is as follows:

"On and after our regular meeting in May, 1917, all renewal fees shall become due and payable on the first day of May of each year, without regard to the date of the license, and the failure to pay the renewal by May 1st shall act as an annulment of such license, and, to procure another license, such embalmer shall make written application to the board for a new license, accompany the same with a fee of \$10, and present himself or herself for examination at a regular meeting of the board."

The board is authorized under the fifth subdivision of section 5302, R. S. 1919, "to adopt rules and regulations and by-laws, from time to time, not inconsistent with the laws of this state or of the United States, whereby the performance of the duties of said board and the practice of embalming dead human bodies shall be regulated." Under section 5303, R. S. 1919, as amended by laws 1921, p. 391, it is provided in effect that all persons now engaged or desiring to engage in the practice of embalming dead human bodies shall make a written application to the state board of embalming, accompanied by a fee of \$10, for a license, and shall present himself or herself before the board at such time and place as may be fixed for examination, and, if it be found that the applicant possesses the requirements prescribed by the statute, a license shall be issued.

Disposing of the case, the Supreme Court said:

"While the foregoing section does not define the term for which the license shall be granted, this limitation appears in the succeeding section (section 5304 R. S. 1919, as amended by Laws 1921, p. 392) as follows:

"Every registered embalmer who desires to continue the practice of his profession, shall annually thereafter, during the time he shall continue in such practice, on such date as said board may determine, pay the secretary of said board a fee of three dollars for the renewal of registration."

"After five or six years of compliance with rule 6, relators have reached the conclusion, as indicated by their petition, that the board has misinterpreted and misapplied said rule, in that, to employ relators' language, 'the board interprets said rule to mean that said renewal license fees become due and payable for the ensuing year on the first day of May each year, and if not paid by that date the license of any embalmer failing to comply is at once annulled and the holder compelled to make application for a new license.' Relators' contention is:

"That the reasonable and correct interpretation of said rule 6 is that said renewal license fees become due and payable on May 1st of each year, and, if not paid by the first of May following, the holder thereof forfeits his license by annulment for failure to pay such fees, and must thereafter make application for a new license, if he wishes to practice the art of embalming in this state."

"Whether the foregoing is a correct statement of the board's construction of its rule as well as the construction given to it by the relators must be determined by the facts. Although the rule may be invalid in part or as a whole if it appears that the board, in this matter, did not act in conformity therewith and the statute under which it did act contains sufficient power and authority to support the board's action, and if by such action relators are deprived of no right to which they are entitled under the

law, then the alternative writ must be held to have been improvidently issued, and the prayer of the relators denied

"It is conceded that the relators' license expired on the 30th day of April, 1922. They were required under the statute (section 5304, supra) to make application for a renewal of same before its expiration. This they did not do. Whether the board formally annulled the license after its expiration is immaterial. It was thereafter, so far as it was able to confer any power upon or invest the relators with any privilege, as inert as the dust 'in the tombs of all the Capulets'. This being true under section 5303, supra, relators were required to make written application to the board accompanied by the required fee, present themselves before it, and, if upon examination they were found to possess the qualifications required, they were to be licensed as embalmers. The facts do not show that in any particular the board exceeded these express statutory powers. On the contrary, its conduct throughout is characterized as exceedingly fair in affording the relators ample opportunity to renew their license. In what manner, therefore, has any clear legal right of the relators been denied which it was the duty of the respondents to grant? Absent this essential, and there is no substantial resting place upon which to base the application for this writ . . . which has been characterized as a 'hard and fast . . . unreasoning writ, . . . reserved for extraordinary emergencies.'

"It is a mistaken conception of the nature of any calling, professional, commercial or industrial, that it is invested with such sanctity as to exempt it from reasonable legal regulations. The ever-expanding exercise of the police power manifested in the enactment of regulatory statutes, embracing every possible vocation, demonstrates the fallacy of this conception. The purpose of such statutes is in some instances to encourage efficiency and in others to promote sanitation, whereby in the first incompetency may be eliminated and in the second the public health preserved.

"However much, therefore, we may decry the growing tendency to increase the number of the boards, commissions, and bureaus as promotive of a system of paternalism destructive of individual effort, such legislation is immune from judicial regulation unless the power interferes with the inherent rights of the citizen. It is not an issue in this case but, in passing, it may be said that the statutes defining the powers of the embalming board are not to be thus characterized. A re-examination of one who has permitted his license to expire is not an oppressive requirement or an invasion of an inherent right. It affords the board an opportunity to determine whether, under that feeling of security afforded by a license renewable upon a mere application, the applicant has not become inefficient through mental inertia.

"The fee required of a first applicant or of one seeking a license after forfeiture is not unreasonable. It is necessary in the economical administration of public affairs that each department created by law should, so far as reasonably possible, be authorized to charge such fees for services rendered as will enable the department to be self-sustaining. The fee required in this instance does not accomplish more than this result. Furthermore, it is not in excess of fees for like services charged by other departments.

"Neither under the issues submitted, therefore, or those which might have been submitted had the validity of the statute been questioned, is there any ground for the issuance of this writ; and it is denied."

SECTION 5 REGULATION OF FUNERAL CHARGES

As will be seen in the Digest of State Laws and Regulations in Part II, a Tennessee law purports to limit the amounts that may be charged for embalming. But, apparently, the validity of the law has not been tested and is regarded as being in doubt, for a rule of the board of embalmers provides that embalming charges are to be arranged by contract.

A Montana statute, which was broad enough in its language to permit state fixing of charges for burial supplies, if not for a funeral director's services, was declared unconstitutional by Judge Bourquin of the United States District Court for the district of Montana in the case of *A. M. Holter Hardware Co. vs. Boyle*, 563 Federal Reporter, 134.

Speaking of the law, Judge Bourquin said:

"It ranges from the street corner vendor of popcorn and bananas to the merchant prince, from coal to diamonds, from the babe's first swaddling band and cradle to the aged man's shroud, his coffin, and his grave."

The statute in question purported to confer on the Montana Trade Commission the following enumerated powers, among others. To "make such investigations as may be necessary into the business of any person, firm, co-partnership or corporation engaged

in buying or selling commodities," etc. "To investigate and examine any or all of the books or papers of any person," etc., "engaged in business within the State of Montana, for the purpose of ascertaining the cost . . . and selling price . . . , and to ascertain and determine the profits and charges collected" To "establish maximum prices or establish a reasonable margin of profit to be charged in any locality for all commodities . . . and burial lots in public cemeteries operated for private gain," for so long a time as deemed advisable

Judge Bourquin's opinion opens with a reference to the Montana statute as one which "provides for a trade commission to regulate business, and when and where it pleaseth to 'establish maximum prices for a reasonable margin of profit' in respect to all commodities, and, curiously enough, burial lots in cemeteries for gain"

The decision then proceeds to explain that legislatures cannot foreclose judicial inquiry into the validity of laws, by declaring that the public welfare demands such laws, and that fundamental rights guaranteed by the federal constitution cannot be infringed upon under a pretext of emergency needs of the public At the same time, the opinion recognizes that "the constitution is not a barrier to changes in state policy and law to suit new circumstances and conditions, not a bar to new application of its principles"

Other pertinent parts of the opinion are as follows:

"Legislative regulation of prices in business and employments that are of public interest, concern, and consequences is consistent with the Fourteenth Amendment. Like regulation in ordinary mercantile business and ordinary employments, all of which are purely private, is repugnant to said amendment Time and circumstances may convert some of the latter into the former—so change their character and incidents that from purely private they are transformed into those of public interest, concern, and consequence When this occurs, they become subject to legislative price regulation, a new species of the genera of business of public interest, a new application of the old principle of regulation

"In the instant suit emergencies, public opinion, prevailing morality, war and its consequences, and legislative fiat have transformed ordinary mercantile business into business of public interest Despite them, the character and incidents of ordinary mercantile business remain unchanged It is still open to and followed by many persons, rather than by a few, ranging from push carts, through all gradations, to mail-order emporiums, independent and in competition, wherein are constant new adventurers, some succeeding, some failing, and equally constant passing of the old, affording extensive choice to the purchasing public Its transactions are independent, individual, and of no material consequence to any one, save to the seller and buyer in each thereof, and upon whom alone the effects fall It remains purely private in character and incidents.

"In defining what business is of public interest, concern, and consequence, and accordingly subject to legislative price regulation, the Supreme Court says it can be best explained by examples, and cites public utilities, insurance, and grain storage, and applies the principle to wages in public utilities and to wages of women and minors. It further says that, though there is some public interest in every person and in their every transaction, this is not the public interest in respect to which alone there is legislative power to regulate prices; that this latter public interest exists only when it is a 'broad and definite public interest,' arising by reason of the nature of the business, wherein its proper conduct concerns more than the parties to any single transaction, wherein by reason of peculiar circumstances the business sustains such relation to the public that they are affected by its consequences—in all in marked contrast to ordinary mercantile business and ordinary employment

"This construction of constitutions is virtually a rule of property and a principle of government, not to be changed by Legislature or courts in any circumstances, but only by the people by constitutional amendment

"It may be further observed that, however it might be if the enactment was limited to the prime necessities and was a war measure, it is inconceivable that its all-embracing provisions, now when the war is over, save as a fiction perpetuating rather dictatorial powers, are necessary to public health, peace, and safety. It ranges from the street corner vendor of popcorn and bananas to the merchant prince, from coal to diamonds, from the babe's first swaddling band and cradle to the aged man's shroud, his coffin, and his grave. Trifles, necessities, luxuries—all are within its scope As a whole the enactment would accomplish a complete reversal of the American system of business economics that has prevailed from the nation's birth True, there is no federal control over the state in the matter of economic theories it will pursue, provided not counter to constitutional limitations But that involved herein goes beyond economics, and virtually invades and changes the methods, if not the system of government. Who will

question the wisdom of the Constitution that this should not be done, save by three-fourths of the states in concert?"

SECTION 6 VALIDITY OF OCCUPATION TAXES

A state may validly impose occupation taxes on funeral directors, graduated according to the sizes of the cities in which they operate, holds the Georgia Supreme Court in the case of *Richardson vs Barclay & Brandon et al.*, 116 *Southeastern Reporter*, 807.

In 1921 the Georgia Legislature enacted a general tax act, containing the following provision.

"Upon each person, firm, or corporation whose business is that of burying the dead and charging for the same, commonly known as undertakers, in cities of more than 50,000 inhabitants, per annum, \$200, in cities from 10,000 to 50,000 inhabitants, per annum, \$100; in cities from 5,000 to 10,000 inhabitants, per annum, \$50; in cities from 2,500 to 5,000, \$20, in cities or towns of less than 2,500 inhabitants, \$10."

The court holds that this act does not violate provisions of the Georgia constitution, providing that all taxation shall be uniform upon the same class of subjects, and that property shall be impartially protected by the government.

The court refers to the case of *Wright vs Hirsch*, 116 *Southeastern Reporter*, 795, for the reasoning on which it proceeds. That was a case involving a similarly graduated tax on cigar dealers, but the legal principles were the same and were exhaustively considered by the court.

SECTION 7. MUNICIPAL REGULATIONS

An ordinance adopted in Detroit in 1918 provides for the obtaining of licenses from the mayor to engage in the undertaking business, imposing an annual fee of \$1. Such ordinances ordinarily are probably free from valid constitutional objections, despite the grant of licenses by the state to engage in the business of embalming, etc. It is generally held by the courts that grant of a license by a state to engage in a business or profession does not preclude imposition of municipal license regulations unless the Legislature has indicated a purpose to exclude local regulations.

A Massachusetts statute enacted in 1832, authorizing the town of Charlestown to establish a board of health, was held by the Massachusetts Supreme Judicial Court to authorize the town selectmen to regulate funerals and the interment of the dead (*Austin vs Murray*, 16 *Pickering's Reports*, 121). But it was held that the statute did not authorize the selectmen to forbid the bringing of a body into or through the town without their leave. And it was further decided that a by-law of the selectmen, forbidding the exercise of the office of funeral undertaker by one not licensed by the selectmen, was void as applied to one bringing bodies into the town.

NOTE—The subject of restricting location of funeral homes and kindred establishments in cities is treated in Chapter II; transportation regulations, in Chapter III, and Death Statistics in Chapter IV.

CHAPTER II

RESTRICTIONS ON FUNERAL HOME LOCATIONS

SECTION 8. WHERE ORDINANCE IS NOT INVOLVED

Until a few years ago, the leading court decision on the right to restrain a funeral director from conducting his business near residential property was that handed down by the New Jersey Supreme Court in the case of *Westcott vs. Middleton*, 43 New Jersey Equity Reports, 478, 11 Atlantic Reporter, 490. And that decision appears to stand as the funeral director's strongest reliance, so far as judicial precedents go. But the Michigan Supreme Court, in the *Saier Case*, elsewhere referred to in this chapter, distinguished the New Jersey decision on the ground that there the funeral director had conducted his establishment for several years before complaint was made, whereas in the Michigan case injunction was sought, and allowed, against the opening of a new establishment. In the *Westcott* case, the New Jersey court declared that the burden to show that a funeral director's establishment, in which he keeps coffins, ice boxes and cases in which he preserves the bodies of the dead, and in the rear of which premises he cleanses and dries such boxes, is a nuisance, is on a complaining neighbor, and that *physical discomfort arising from a morbid taste or excited imagination*, as distinguished from such discomfort arising through the organs of sense common to all, is not sufficient to warrant public or private interference in the conduct of such a lawful business as is the funeral director's profession. Said the judge who wrote the New Jersey decision: "The results of my inquiries are that while the defendant has no right to conduct his business so as to threaten or endanger the health of the complainant, or to make his home uncomfortable, either by filling the air with noxious vapors or the germs or seeds of disease, the evidence does not show that he has done either; and that the business of an undertaker is not a nuisance in itself."

"In the second place, it is urged that the business of an undertaker is a nuisance in itself. Is this proposition maintainable? Must the undertaker retire from the inhabited parts of our villages, towns and cities? Is an occupation which is absolutely essential to the welfare of society to be condemned by the courts, to be classified with nuisances, and to be expelled from localities where all other innocent and innoxious trades may be carried on? In other words, is this business so detestable in itself as unreasonably to interfere with the civil rights or property rights of those who dwell within ordinary limits, and who can and do, without effort see and hear what is being done? The inquiry is not whether it is obnoxious to this or that individual or not; but whether or not it is of such a character as to be obnoxious to mankind generally, similarly situated. There are certain obscene or offensive sights, certain poisonous or destructive gases or odors, certain disturbing sounds or noises, which affect most persons alike. Can the business of the undertaker be classed with any of these?

Before the court can condemn a trade or calling, it must appear that it cannot be carried on without working injury or hurt to another, and, as I have said, that injury or hurt must be such as would affect all reasonable persons alike, similarly situated.

"The law does not contemplate rules for the protection of every individual wish, or desire, or taste. It is not within the judicial scheme to make things pleasant or agreeable for all citizens of the state."

"Although the business of undertaking, caring for and burying the dead, has been conducted in about the same manner from the earliest times (that is, in an open and public manner, in the town and city, as well as in the country), and so continues to be, where the most refined and cultivated abide, as well where the unpretentious do, yet from no class has anyone been brought to testify to any bodily or mental injury or suffering because an undertaker was carrying on his vocation in his neighborhood."

In the *Densmore* case, elsewhere referred to in this chapter, the Washington Su-

preme Court distinguished the case before it from the one which was before the New Jersey court in the Westcott case, by saying:

"It is seemingly in point, yet it may be distinguished from the case at bar. There, so far as the decision indicates, the undertaking establishment was in the most populous section of the city. We may assume that it was not in a residence section, for the lower floor of the building occupied by the complainant was given over to business purposes, the upper floors only being used for residence purposes, and, further, the establishment had been carried on without complaint for eleven years. Furthermore, the court found that the complainant was of a supersensitive nature, rather than one possessed of the plain, sober and simple notions prevailing among the English people, as is stated in the books, that he had a horror of such things in excess of the ordinary person, so much so that in the seventy-two years of his life he had not attended to exceed half a dozen funerals."

See, also, the dissenting opinion of Mr Justice Eschweiler in the Wisconsin case of Cunningham vs Miller, 189 N. W. 531, later referred to in this chapter.

A few years ago, Superior Judge Easterday of Tacoma, Wash., dismissed the case of Mrs Ada Sutter against the C C Mellinger company. Mrs Sutter sued for damages to her property as a result of the construction of the Mellinger company's undertaking establishment on lots adjoining at South 5th and Tacoma avenue. According to Judge Easterday this was a case of what is known in legal lore as "damnum absque injuria." Translated into plain English it means a loss without an injury. Judge Easterday said that healthful and beautiful dwellings and useful trades and business supplying the necessities of life are essential to the happiness and prosperity of the people, and that all persons ought to be willing to lay aside some comforts or conveniences for the benefit of the community. If a person possessed of more dollars than sense, the court said, should build a palatial home in the business district and surround it with an expensive lawn, it would injure adjacent property for business purposes, yet there would be no ground for complaint. The lines were closely drawn in the case, the court said, and if it had been a suit to prevent the establishment of the Mellinger company's business in the neighborhood there might have been an inclination to resolve the doubt in the plaintiff's favor. The plaintiff having stood by, however, and watched the construction of the building, knowing for what it was to be used, the court held that there was no cause for action.

This decision, however, is deprived of much weight as a judicial precedent by reason of the fact that it was not handed down by a court of high authority. But we refer to it because of the inherent soundness of the judge's reasoning.

"That an undertaking establishment is not a nuisance *per se* [in itself] may be assumed without citing authority." This language of the Washington Supreme Court in the case of Densmore vs Evergreen Camp No. 147, Woodmen of the World, 112 Pacific Reporter 255, is followed, however, by a conclusion that such an establishment may become an abatable nuisance, if it is so located as to interfere with the enjoyment of neighboring residence property. In this case it appeared that the location was within three or four feet of one residence and about 35 feet from another, in the town of Everett, Wash. The grounds on which the court granted an injunction against continuance of the business in that place appear from the following extract taken from the opinion in the case:

"In this age, when population is becoming more and more congested in the cities, it would be manifestly unfair to grant injunctive relief only in those cases where the object attacked was a nuisance *per se*, when other circumstances or conditions intervene which might tend to destroy the repose and comfort of a part of a city or town given over to homes. The element of comfort and repose in the enjoyment of the home becomes an essential element of our inquiry, for it is not only shown by the evidence, but it may be accepted as within the common knowledge of man, that the immediate presence of those mute reminders of mortality, the hearse, the chapel, the taking in and carrying out of bodies, the knowledge that within a few feet of the windows of one's dwelling-house, where the family sleep and eat and spend their leisure hours, autopsies are going on, that the dead are there, cannot help but have a depressing effect upon the mind of the average person, weakening, as the testimony shows, his physical resistance, and rendering him more susceptible to contagion and disease. There is evidence tending to show that noxious odors, gases, especially those arising from the deodorants used in cleansing the premises, would permeate the homes of respondents, that there is danger of infection and contagion from the proximity of the morgue and the possibility of flies passing from one place to the other. The testimony is supplied by physicians sworn as experts. Their testimony is denied or minimized by the appellant Maulsby and other undertakers who were called as witnesses, but the fact that reasonable men of fair minds differ upon these questions impelled the trial judge to find

against appellants upon the facts, and warrants us in subscribing to his view that the danger is at least probable."

When foul and noxious odors escape from an undertaking establishment, or where there is danger to the health of nearby residents, the establishment constitutes a nuisance which may be enjoined. But no injunction properly issues on the ground that the place will disturb the neighbors in the enjoyment of their premises, or that the presence of the establishment nearby will depress them in body or spirit, or depreciate the value of their property. This is the gist of the decision of the California District Court of Appeal in the case of *Dean vs. Powell Undertaking Co.*, 203 Pacific Reporter, 1015. In that case the court reversed an injunctive decree which had been awarded by a lower court against defendant, and said, in part:

"The appellant contends that it should not have been enjoined from conducting upon its own property a business in all respects lawful and in all respects operated with the highest degree of care and under the latest approved methods, solely and entirely because a few people living in the neighborhood believe that such business so conducted will hereafter cause them mental depression. In reply to this contention the respondents have stated they are entitled to the relief awarded and that their position is supported by authorities. They cite cases that arose in those jurisdictions where a statute or ordinance had been passed limiting the locations in which an undertaking establishment might be located. *City of St. Paul v. Kessler*, 146 Minn. 124, 178 N. W. 171; *Meagher v. Kessler*, 147 Minn. 182, 179 N. W. 732, and *Brown v. City of Los Angeles*, 183 Cal. 783, 192 Pac. 716. As Fresno has not adopted an ordinance on that subject, the cases are not helpful. The respondents cite other cases which involved an issue and a finding by the trial court to the effect that from the building in question there escaped, or would escape, foul and noxious odors, or, as in some instances, that by reason of the operation of the particular building there was great danger to health from infectious and communicable diseases from the bodies of persons taken to the premises in question. . . . But the plaintiffs have not made any showing to the effect that the defendant's building will be so constructed and operated that there will escape from the building any noxious odors or that any disease will be allowed to spread therefrom.

"In plaintiffs' complaint, they inserted something regarding the blocking of the streets, etc., but that the blocking was expected to occur by reason of the holding of funerals. But the trial court did not enjoin the holding of funerals, and this appeal is not concerned with the subject of the blocking of streets.

"If the particular acts enjoined in this case under the facts found can be legally enjoined, then it would seem to follow that for the very same reasons nearly every hospital in the land could be enjoined. We cannot believe such is the law.

"The trial court found that the value of the plaintiffs' property for residential purposes will be depreciated. Such findings, standing alone, and not supported by other findings showing that the defendant is maintaining, or is about to maintain, a nuisance, will not support the judgment. In many instances in populous neighborhoods the property of one person is depreciated by the near proximity of the property of another. Such burdens are ordinary incidents to residence and ownership of a city."

In the case of *Goodrich v. Starrett*, 184 Pacific Reporter, 220, the Washington Supreme Court granted an injunction against the maintenance of a funeral directors' place of business in close proximity to dwelling houses in a residential district in Port Townsend.

This decision, however, appears to depend somewhat on the point that there is a Washington statute which enlarges the common-law definition of nuisance by introducing the element of "comfortable enjoyment of one's property."

The appellant Starrett owned a building originally constructed as a dwelling house, situated in a residence portion of the city, and surrounded by the dwelling houses of others in use as residences by their owners. For some 20 years Starrett, either by himself or in partnership with others, had conducted an undertaking establishment and morgue in the city of Port Townsend, at a place remote from residences, and to which there was seemingly no objection because of its location. Some three years prior to the commencement of the action Starrett entered into partnership with his coappellant, Weeks, for the conduct of the business, and shortly prior to the commencement of the action moved the business to the dwelling house of Starrett before mentioned. At the time of the removal the house was somewhat out of repair, one of the windows was entirely gone, and others had in them broken panes of glass, all were without fly screens, or screens of any sort, save for some sash curtains of a flimsy nature, and there were no proper sewer connections, necessary, as one of the appellants admitted, to the conduct of a first-class morgue. With the house in this condition, the appellants began to receive dead bodies for the purpose of preparing them for

burial; those dying from contagious and infectious diseases as well as others. Their testimony was, however, to the effect that the building was being put in repair as rapidly as possible.

The respondents owned dwelling houses, which were adjacent to the house in which the appellants were conducting their business. The testimony of the respondents was to the effect that the conduct of the business greatly interfered with the enjoyment of their homes, that they lived in dread of acquiring some contagious disease; that the constant conveying of dead bodies in and out of the building, the conducting of funeral services therein, accompanied by the hysterical sobbing of the relatives of the dead, has a depressing effect upon them, especially upon the women of the families, who, because of the nature of their duties, must remain in the homes and be constant witnesses of the business conducted by the appellants. As typical of the testimony concerning the effect the conduct of the business had upon the surrounding families, we quote from the testimony of the respondent Mrs. Goodrich:

"I am unable to relish my meals or sleep properly, it is on my mind continually. It has a depressing effect upon me. I don't think I am over-sensitive. I have been with the dead at the time of dying, and have no fear of spirits or anything like that, but it is very disagreeable. I have a constant fear of contagion from living in close proximity to a morgue, on account of my children and family. I have noticed a great many flies around my premises lately. I am continually fighting them in the house, we are in fear of them all the time. It suggests this morgue the moment I see a fly. I can see the morgue. I can see from my back door the entrance there, I presume, to the basement or the cellar of the house, and upstairs I can see what goes on in the street, I can hear hysterical sobbing and the music that is played there. From my yard I can see them carrying in and out dead bodies. It spoils the enjoyment of our home. I don't care to invite guests to dine at my table. I know that a great many of my friends have the same feeling that I have in regard to it. My chief pleasure has been in caring for my garden, and I am denied that pleasure. If the morgue continues to run in close proximity to my residence, I feel that I cannot live there, and will want to move as soon as we are able."

There was testimony, also, that the permanent operation of the business would greatly decrease the money value of the surrounding property, and testimony of a physician, called as an expert, to the effect that contagious diseases could be carried from the dead bodies in the morgue to the inhabitants of the surrounding dwellings, although it can be gathered from this evidence that he thought the probability somewhat remote.

The testimony of the respondents as to the danger to them arising from the presence of the undertaking establishment was denied by the appellants, and their testimony tended also to minimize the injury testified by the respondents to arise from the general conduct of the business.

Affirming the judgment of the lower court, the Supreme Court said:

"It is the appellants' contention that the facts do not justify the judgment of the court. Attention is called to the general rule that the business of an undertaker is not a nuisance per se [inherently] and to the corollary of the rule that, before it can be held as such, some special circumstance must be shown taking the particular business from without the rule, and argue that the evidence here fails to disclose any such special circumstance.

"The Code, under the chapter entitled 'Nuisances,' defines a nuisance as follows:

"'Nuisance consists in unlawfully doing an act, or omitting to perform a duty, which act or omission either annoys, injures or endangers the comfort, repose, health or safety of others, offends decency, or unlawfully interferes with, obstructs or tends to obstruct, or render dangerous for passage, any lake or navigable river, bay, stream, canal, or basin, or any public park, square, street or highway, or in any way renders other persons insecure in life, or in the use of property.' Rem. Code, Sec. 8309.

"In the chapter of the Code prescribing a remedy for the abatement of nuisances, a nuisance is further defined as

"'Whatever is injurious to health, or indecent, or offensive to the senses, or an obstruction to the free use of property, so as to essentially interfere with the comfortable enjoyment of life and property.' Rem. Code 1915, Sec. 943.

"In *Eycett v. Paschall*, 61 Wash. 47, 111 Pac. 879, 31 L. R. A. (N. S.) 827, Ann. Cas. 1912B, 1128, we said that these statutes somewhat widened the common-law definition of nuisance, in that a new element was added—'that is, the comfortable enjoyment of one's property'—and it was there held that dread of disease and fear produced thereby, contrary to the holding of a case founded upon the common law, warranted injunctive relief against a sanitarium for the care of patients afflicted with tuberculosis, which it was sought to establish in a residence district of the city; and

this, notwithstanding the expert testimony which tended to show that the danger of contagion to the surrounding residents was remote, and the fear more imaginary than real. In *Densmore v Evergreen Camp No 147, W O W*, 61 Wash 230, 112 Pac 255, 31 L R A (N S.) 608, Ann Cas 1912B, 1206, the principle was applied to an undertaking establishment. It was there held that such an establishment could be enjoined as a nuisance, when it was sought to conduct it in a residence district, notwithstanding it was maintained with every sanitary precaution.

"The principle of these cases clearly justifies the judgment of the trial court. The witness from which we have quoted but voiced the feeling and sentiment of the ordinary individual who is compelled to live near an institution of this sort. The injury to her is physical and actual, it does not depend upon imagination. There are persons, of course, whose occupations have brought them to endure conditions of this sort without suffering or discomfort. But this is the result of their environment. The ordinary individual cannot endure them without actual discomfort and physical suffering, until, at least, his senses have become hardened by a long period of exposure to them. In addition to this, there is the positive showing of destruction of property values. While counsel question that sufficiency of the evidence in this respect, we think the only thing indehinite about it is the amount of the decrease. That there is a substantial decrease we think was abundantly proven. Indeed, it would seem that it is within the ordinary knowledge of mankind that the erection of an undertaking establishment and morgue in a district of a city suitable only for, and used only for, residence purposes, would decrease the value of the surrounding property. Certainly no one, possessing the sensibility of the ordinary being, would take up a residence in its vicinity as long as other places were obtainable.

"But perhaps the appellants' principal reliance for reversal is the case of *Rea v Tacoma Mausoleum Association*, 103 Wash 429, 174 Pac 961. In that case we held that an addition to a mausoleum would not be restrained as a nuisance, injuriously affecting adjoining residence property, when unattended by injurious or offensive drainage or fumes sensible to the complaining party. In the case, however, the cases of *Everett v Paschall* and *Densmore v Evergreen Camp No 147, W O W*, were noticed, and held not to be in conflict with the principle there announced. We are still of the same opinion, and hold that the case in no way reflects upon the earlier cases as authority."

One of the leading cases in which the right to enjoin establishment of a funeral home in a residential district has been upheld is that of *Saier v Joy*, 164 Northwestern Reporter, 507, decided by the Michigan Supreme Court.

On the facts proved in that case, an injunction was granted against a proposed new location of defendants' establishment in Lansing.

Defendants had previously conducted their undertaking business in the business section of the Michigan capital, but bought property in a section largely, if not exclusively, given over to apartment and dwelling houses. When they signified their intention to establish undertaking quarters on the property, plaintiffs, owners of nearby property, instituted suit to enjoin such action. The circuit judge of the county dismissed the suit on the ground that no right to injunction was proved, but the Supreme Court reversed the decision on appeal. It seems that the fact that the undertaking establishment had not already been located on the newly purchased property must have had some considerable weight with the higher court in the conclusion reached, and the decision is not to be regarded as authority for disturbing undertaking establishments which have become entrenched in even residential neighborhoods. In the latter case the proprietor would be entitled to the equitable consideration that nearby property owners, having permitted him to go to considerable expense in erecting property specially adapted to the undertaking profession, are not in a position to later object.

Plaintiff's suit proceeded upon the theory that the value and desirability of their property would be materially decreased by the maintenance of defendants' business in the neighborhood, that there would be great danger of infection and communication of disease from the bodies of persons dying therefrom and taken to defendants' morgue, that disagreeable and noxious odors would permeate the neighborhood; that bodies would be taken there for autopsies and embalming; that bodies of persons meeting accidental death and unknown dead would be taken there and left for some time pending identification; that funerals would be there conducted, involving a frequent coming and going of hearses and dead bodies; that all of these conditions would create such a constant reminder of death as to depress plaintiffs, their tenants and roomers, rendering them less able to resist disease, and, in consequence, rendering defendants' establishment a private nuisance which should be abated at the suit of affected persons.

The defense claimed that they had been engaged in business for many years; that defendants were licensed embalmers, and had always conducted, and would in the

future conduct their business in accordance with the rules of the state board of health, in a sanitary manner, that the bodies of persons dying from communicable disease, other than tuberculosis and typhoid fever, would not be taken to their establishment; that there was no danger to the health of adjacent residents, that no noxious or disagreeable odors would escape the premises, that the establishment, including the morgue, would be constructed of brick and along strictly sanitary lines, that the front of the building would have the appearance of a residence, that funerals therefrom would be infrequent, and that the business would not be conducted in any way that would depress the normal person; that no nuisance would be created; that both the injury and damages asserted by plaintiffs were merely speculative, and that in many cities funeral establishments and morgues are located in residential districts.

Responding to the questions of fact thus raised between the parties, the Supreme Court found that the establishment of defendants' business at the proposed location would diminish the value of the neighboring property from one-quarter to one-third.

But it was decided that there was no danger of disease being communicated, because it was amply shown that the defendants, throughout the course of many years' business, had always conducted it in a healthful and sanitary manner, conforming to the rules of the state board of health. The court said:

"When so conducted, the danger, if not entirely removed, is infinitesimal. The proofs show and are uncontradicted that no bodies of persons dying from communicable disease, other than from tuberculosis and typhoid fever, would be taken to the morgue. Some stress is laid on the tuberculosis cases. But we are satisfied from the record that, notwithstanding the lay opinion of the dread disease, there is no danger of its communication from a dead body to persons in adjoining houses, where proper precautions are taken in accordance with the regular method of embalming. Physicians seem to agree that not only have decidedly advanced steps been taken in its treatment, but also in prevention of its spread."

The decision adverse to defendants seems to rest largely on the court's assumption that noxious odors would escape from the defendants' establishment. On this point the opinion remarks:

"Formaldehyde is extensively used by them in embalming, deodorizing, and sanitation. The more thorough and complete the sanitation, the more formaldehyde is used. It gives off a pungent odor, and it is quite doubtful to our minds that this odor would fail to reach adjacent houses, situated as close as these houses, especially in the summer time, when the plaintiffs would expect to have, and have a right to have, their windows open. The Saier apartments are within 13½ feet . . . and there are 25 windows on the north side. The Johnson and Quarmby houses are very close to the line and have numerous windows facing defendants' property."

"The defendants have failed to convince us that undertaking establishments with morgues are located in other cities in the strictly residential districts. While testimony tending to support such claim appears in the record, the testimony in rebuttal is persuasive that such establishments either border on, and are close to, business sections, or are in locations where the residential character of the district is giving way and business is breaking in."

"The argument revolved quite largely around the question whether the maintenance of an undertaking establishment and morgue in close proximity to a home would so affect the normal mind as to render its maintenance in a strictly residential district, such as this district is, a private nuisance, and as such abatable by a court of equity. Much testimony, both professional and lay, upon the subject was taken. Whether this may be the subject of opinion evidence is a mooted question. We think it requires no deep research in psychology to reach the conclusion that a constant reminder of death has a depressing influence upon the normal person. Cheerful surroundings are conducive to recovery for one suffering from disease, and cheerful surroundings are conducive to the maintenance of vigorous health in the normal person. Mental depression, horror and dread lower the vitality, rendering one more susceptible to disease, and reduce the power of resistance."

The constant going and coming of the hearse (defendants in 11 months had 269 funerals), and not infrequent taking in and out of dead bodies, the occasional funeral, with its mourners and funeral airs, held in the part of the house designed for a chapel; the unknown dead in the morgue, and the visits of relatives seeking to identify them, the thought of autopsies, of embalming; the dread, or horror, or thought, that the dead are lying or may be lying in the house next door, a morgue; the dread of communicable disease, not well founded, as we have seen, but nevertheless present in the mind of the normal layman—all of these are conducive to depression of the normal person; each of these is a constant reminder of mortality. These constant reminders, this depression of mind, deprive the home of that comfort and repose to which its owner is entitled.

"We cannot overlook the right to engage in a lawful trade, nor the fact that the conduct of the undertaking business is not only lawful, but highly necessary, nor that it is not a nuisance in itself. Nor can we overlook the right of the citizen to be protected in his home, and his right to the enjoyment there of that repose and comfort that are inherently his. The question here is not the restraint of defendants' business, but the restraint of its intrusion into a long-established and strictly residential district. The cases directly in point are meager. The industry of counsel, and such investigation as we have been able to make, disclose but two."

Reconciling the New Jersey decision (*Westcott v Middleton*, 43 N J Eq 478), the Michigan court notes that in the New Jersey case the undertaking establishment had been maintained for eleven years at the location objected to and apparently in an at least semi-business district. It is further attempted to distinguish the decision on the ground that plaintiff was found to be a supersensitive person, but there is a distinct conflict in the conclusions of the New Jersey and the Michigan courts, for while the latter lays stress on the annoyance flowing from the mere knowledge that dead are present in a nearby building, the New Jersey court says, and I think with a greater show of reason, that *physical discomfort arising from a morbid taste or excited imagination*, as distinguished from such discomfort arising through the organs of sense common to all, is not sufficient to warrant public or private interference in the conduct of such lawful and necessary business as is the undertaker's profession. "And although the business of undertaking . . . has been conducted in about the same manner from the earliest times (that is, in an open and public manner, in the town and city, as well as in the country), and so continues to be, where the most refined and cultivated abide, as well as where the unpretentious do, yet from no class has any one been brought to testify to any bodily or mental injury or suffering because an undertaker was carrying on his vocation in his neighborhood."

If the court can compel this defendant to cease his trade next door to Mr. Westcott because the sight of these instruments used in burying the dead have an unhealthy influence on his mind, then the vender of crepe, and the artist who cuts tombstones and monuments will inevitably be liable to the same condemnation."

One of the latest decisions on this subject was handed down by the Wisconsin Supreme Court in the case of *Cunningham v Miller*, 189 N W, 531. In that case, the court denied defendants' right to establish a funeral home in a deteriorating residential district in La Crosse.

The chief comfort derivable by the undertaking profession from the report of the case lies in the dissenting opinion of Mr. Justice Eschweiler, one member of the court who refused to give his assent to the proposition that plaintiffs were entitled to enjoin defendants' use of their property as a funeral home. It is also to be noted that the decision of the majority is somewhat dependent upon a finding of the trial court that the district in question was still used almost exclusively as a residential section of considerable importance, and that there were no business houses within five blocks of defendants' location, excepting a drug store, paint shop and a few other scattering establishments not in the immediate neighborhood.

The chief disadvantage to the profession lies in an added precedent of a high court, recognizing depreciation in adjacent property values, dread of disease contagion and depressing reflections concerning mortality, etc., as elements which entitle owners of dwelling house property to enjoin the maintenance of nearby undertaking establishments.

The gist of the majority opinion is as follows:

"The argument that the property is not located in a district occupied exclusively by residences is not persuasive. It appears from the evidence that in prior years certain wealthy residents of the city of La Crosse erected very elaborate homes in this vicinity, which, by reason of death and removal from the city, had been vacated by their original owners, and they are not readily salable for anything like the amount of their original cost. It is argued that this depreciation is due to the gradual encroachment of the business section of the city upon the residence district, and not to the alleged nuisance. There is no zoning ordinance in the city of La Crosse or other law or regulation directly affecting the condition existing in reference to the property in question. We think the evidence ample to sustain the finding that the *locus in quo* is a residential district, nor do we think the fact that churches have been or are about to be erected in or near the vicinity materially alters the situation. The churches are not generally or usually associated with the business district of a city. Neither is the presence of a church such a disturbing factor in the life of a community as is the presence of an undertaking and embalming establishment. We make special reference to this feature for the reason that it has been greatly emphasized, and it is somewhat difficult to allocate the depreciation of property to the several causes which may have brought it about. We think,

however, that the finding of the trial court that the presence of an undertaking and embalming establishment results in direct damage to the property rights of the plaintiffs is not against, but is supported by, the clear preponderance of the evidence

"The question of whether or not the findings support the judgment raises a question of law which, so far as we are advised, has not heretofore been directly passed upon by this court. Is the business of preparing dead bodies for burial, with the necessary incidents thereof, including the making of post mortems, the holding of funerals, and the removal of dead bodies to and from the premises, a nuisance when located and carried on in the residential section of a city? This question has been considered by the courts of other states, which have arrived at conclusions that are widely varying. No doubt in this, as in other cases involving nuisances, a rule cannot be laid down to govern all cases. Each case must depend largely upon the particular circumstances which characterize it. The injury complained of must be substantial and tangible, and the discomfort created thereby susceptible to the senses of ordinary people. Its character cannot be determined by its effect upon those of peculiarly sensitive feelings. Its actual effect must be judged by the degree of discomfort and injury produced upon the average person.

"While the circumstances are not the same in any two cases, we think it is well established that a person must use his property with reference to the health, comfort, and reasonable enjoyment of public or private rights by others. In order to warrant the interference of a court of equity, the acts complained of must be such as are offensive to the physical sense, and by reason of such offensiveness make life uncomfortable. As has been said, the result is not to be measured by its effect upon those of extreme sensitiveness. On the other hand, it is not to be measured by its effect upon those who have been accustomed to endure acts such as are complained of without annoyance. It appears in this case that the maintenance of the undertaking and embalming business has operated to materially decrease the market value of the residences owned by the plaintiffs, has rendered such residences materially less desirable as homes, created in the plaintiffs and members of their families feelings of dread of contagious diseases, and feelings of discomfort and dissatisfaction from the sights, noises and odors incident to the business and by the constant reminder of death the feelings of some of the plaintiffs and members of their families have been depressed to an extent which appreciably impairs their comfort and happiness.

"The great weight of authorities in this country is to the effect that the establishment and operation of an undertaking and embalming business in a residential section under such circumstances constitutes a nuisance. . . . As was said by the Supreme Court of the State of Michigan:

"It requires no deep research in psychology to reach the conclusion that a constant reminder of death has a depressing influence upon the normal person."

"We think it is equally clear that maintenance of an undertaking and embalming establishment in a residential section must inevitably operate to decrease substantially property values, destroy the comfort and happiness of people residing in the immediate vicinity, and is an unwarrantable invasion of the rights of others."

The substance of Mr. Justice Eschweiler's dissenting opinion is as follows:

"I think the effect of this decision is to carry the doctrine of the right of a court of equity to interfere with the lawful use by another of the latter's property far beyond the heretofore generally accepted doctrine in that regard.

"An undertaking establishment, when conducted properly—and no question is here raised but that the defendants exercised proper, reasonable and more than ordinary care in the conducting of the business—is not a nuisance per se, even when such undertaking establishment is located in a residence section of a city. 20 R. C. L. p. 455, 29 Cyc. p. 1183. It is necessary, therefore, that there should be some particular situation presented which makes that which is not a nuisance per se a special or particular nuisance. That the lawful use of defendant's property may lessen the selling value of plaintiff's property is not a sufficient basis upon which the right to an injunction of this kind can be predicated. City of Northfield v. Board, 85 N. J. Law, 47, 95 Atl. 745. The effect which that which is claimed to be a nuisance has upon the exceptional individual is not the accepted standard. Its effect upon the sensibilities of the great mass of mankind or average citizen is the standard.

Yet in this case relief was granted upon the idea that the existence of this undertaking establishment did have a depressing effect upon those of nervous temperaments, evidently considering them as differentiated from persons of the normal or ordinary temperament.

"The majority opinion cites seven cases as supporting the conclusion that the establishment and operation of an undertaking and embalming business in a residential district under such circumstances as here disclosed constitutes a nuisance. But two of them involve anything like the business here involved. The only ones so cited

involving an undertaking establishment are *Densmore v Evergreen Camp*, 61 Wash 230, 112 Pac 255, 31 L R A. (N S) 608, Ann Cas 1912B, 1206, where the building proposed to be used for such purpose was but three or four feet from the plaintiff's residence, and the evidence showed danger of infection and contagion, and *Sauer v Joy*, 198 Mich 295, 164 N. W 507, L R A 1918A, 825, where the proposed establishment was within 13½ feet of residence property, and with a finding that noxious gases did reach the adjacent houses.

"In the case at bar there is an open space of 65 feet on one side and 75 feet on the other between defendant's place and the nearest residences, and no substantial showing of actual threatened harm.

"In my opinion the plaintiffs failed to show a reasonable basis for the judgment they have obtained. The situation here is substantially different than if such attempted exclusion had been based upon some reasonable, valid zoning ordinance, as illustrated by such cases as *St Paul v Kessler*, 140 Minn, 121, 178 N W 171, and *Meagher v Kessler*, 147 Minn 182, 179 N W 732, where all within prescribed limits are treated alike by the public authorities, and where the limitation is known before a purchase is made.

"In any event, I think that no more should have been done than direct that any particular features of defendant's business or way of conducting it should have been prohibited rather than the business as an entirety. If the sign or night light or some other feature were too remindful of the depressing idea of the inevitable mortality which surrounds us from the cradle to the undertaking establishment and which the contemplative mind cannot escape having recalled to him by falling leaf, November wind, and the newspaper account of Sunday automobile accidents, all beyond remedy by injunction, then such particular objectionable features might be eliminated or changed by injunction rather than the entire destruction of a going and legitimate business. Such milder form of cure was recognized in cases like *Mackenzie v F M Pauli Co*, 207 Mich 56, 17 N. W 161, 6 A L R 1305, *Weaver v Kuchler*, 17 Okla 189, 199, 87 Pac 600."

Another adverse decision was announced by the Nebraska Supreme Court, in the case of *Reisel v Crosby*, 178 Northwestern Reporter, 272.

The case arose in Omaha and the name given by defendant to his place of business was "Crosby's Funeral Home." His building was formerly occupied as a private residence. It was situated in what is known as "Kountze Place," and 80 residents thereof were plaintiffs. They pleaded that defendant, in disregard of timely protest, was conducting his undertaking business in a residence district, was encroaching upon the repose, the comfort and freedom of their homes, was depreciating the value of their property, was constantly reminding them of death, of preparation for the tomb, of the sorrow of mourners, of the requiem, and of the funeral cortege, and was thus depressing them mentally and weakening their power to resist disease. Interference by injunction was resisted by defendant on the ground that other business enterprises were creeping into Kountze Place, that the homes of plaintiffs were not in a district devoted exclusively to residence, that the present conditions of society and the advancements in modern undertaking demand funeral homes properly conducted in quiet places away from congested centers, that funeral homes are properly and frequently located near residences, that defendant preserved the residential appearance of his building and grounds, that he practiced funeral directing according to modern methods and ethics in strict conformity with law and with the rules of the board of health; that he was not maintaining a nuisance and that an injunction would deprive him of his right to own property and to use it in a legitimate and a necessary business. On the principal issues the trial court found the facts to be as pleaded by plaintiffs and allowed an injunction as prayed by them. Defendant appealed.

Affirming the decision of the trial judge the Nebraska Supreme Court said:

"The question presented by the appeal is the equitable right of plaintiffs to an injunction on the facts established by the evidence. Originally Kountze Place was a quarter section of land platted as an addition to Omaha. The deeds for the lots limited the grant to residential purposes for 25 years. With this common purpose Kountze Place became an exclusive, compact, residential district, where there are paved streets, ornamental grounds, well-kept lawns, private driveways, and beautiful homes. In the pursuit of health, recreation and happiness, families resorted to open porches and children played on lawns. In the midst of these homes and grounds defendant bought a large handsome residence, after the limitation restricting the use of the lot to residential purposes had expired. Over the protest of plaintiffs, defendant occupies and uses this residence for an undertaking establishment. In front of it he erected a sign 4 feet high and 9 feet long, advertising the premises before their eyes as 'Crosby's Funeral Home.' In addition, he has constructed and intends to maintain an electric sign. There is an operating and embalming room in the basement, where the dead are prepared for

burial. To and from the premises an automobile hearse, with unavoidable noises, is driven night and day. Mourners and friends of the dead visit the place. The building is used as a chapel, where sermons are delivered and dirges are sung. Funerals are weekly occurrences, and there were as many as two services in one day. The congestion in the street more than once prevented neighbors from stopping automobiles in front of their own doors. Boxes, used to protect caskets, are piled on the grounds of the funeral home, in view of the public. The dead are carried to and from the hearse a few feet from the windows in the home of one of the plaintiffs. Flowers intended for the funeral home have sometimes been delivered by mistake at private residences. Complete freedom and full enjoyment of home life in the neighborhood have been lost. Lawns, porches, and front rooms have in some instances been partially abandoned, and property in the vicinity has decreased in value. There is a natural shrinking from the scenes and the sounds at the funeral home. Respect for the presence of the dead and for the mourners at funerals grows out of gentle manners and good impulses and influences human conduct. Recurring changes from happy demeanor in private homes to solemnity in the presence of death affect the spirits of rightly constructed individuals, both old and young. The business which defendant conducts among the homes of plaintiffs will tend to depress them mentally, to lower their vitality, and to weaken their power to resist disease. With full knowledge of their protest, the conditions of which they complain were forced upon them by defendant. In exercise of their right to life, liberty, and the pursuit of happiness they had united as a community in a lawful purpose to confine their district to residential purposes. On these facts and conclusions are plaintiffs entitled to equitable relief?

"Defendant contends that plaintiffs are not entitled to an injunction on the ground that Kountze Place is devoted exclusively to residences. He testifies that business is creeping in, that his funeral home is within 1½ blocks of a garage, within 2 blocks of an automobile filling station, and within 3 blocks of a grocery. Accepting his word in these respects as verity, he nevertheless invaded a district hitherto devoted exclusively to beautiful residences. Furthermore, the most serious objections to his funeral home do not apply to the other enterprises mentioned by him. On the record made, the district selected by defendant for business purposes was formerly residential.

"It must be conceded, as insisted by defendant, that undertaking is a necessity, and that individuals and public alike must submit to the unavoidable incidents of the business, when conducted according to approved methods and advancements in science. Undertaking has an intimate relation to all who are distressed by the death of loved ones, and must always be considered in connection with public health. It would be unfortunate, therefore, if either the state, in the exercise of police power, or the court, by means of injunction, should put unnecessary restraints on the class of private and public services performed by defendant, or lower the standards or efficiency of embalmers and undertakers, or deter men of high character from entering such vocations. The selection of the place of business, however, is not necessarily left to the undertaker alone. That subject is often a matter of both private and public concern. No amount of skill or tact can wholly eliminate the depressing influence of the business of undertaking, or its effect upon public health.

"The constitutional or fundamental liberty of a citizen to consult his own tastes in selecting a lawful vocation and in buying and using property is limited by the obligation which his citizenship imposes upon him to respect the equal rights of others. The republic came into existence with a declaration expressing 'a decent respect to the opinions of mankind.' Blasphemy, resulting only in the mental suffering of an individual who is shocked by it, is not the exercise of the liberty of citizenship or of the freedom of speech. A law forbidding the desecration of the flag protects the patriotic sentiment of citizens from outrage. The constitutional liberty of a citizen, including his right to buy and control land, does not permit him to construct on his own premises an unsightly and an unnecessary fence, for the sole purpose of injuring the feelings of a neighbor. These principles recognize the mental factor in considering the right which the Constitution guarantees to citizens. In a proper case a court of equity may consider the same subject. Though defendant was not prompted by malice, or by any evil design, and meant only to exercise the privileges of citizenship, he failed to show proper respect for the property rights and the personal feelings of plaintiffs when he opened his undertaking establishment in their midst. He was in the wrong when he encroached on the repose, the comfort, and the freedom of their homes, depreciated the value of their property, depressed their spirits, and weakened their power to resist disease. His business was not a necessity at the place selected by him. He equipped his funeral home at his peril, after he had been warned by plaintiffs or their objections. Under all of the circumstances the injunction was properly allowed. There is no fixed

or arbitrary rule, however, governing cases of this kind. Each case must be determined by the facts and circumstances developed therein"

In the case of *Meagher v Kessler*, 179 Northwestern Reporter, 732, a suit to enjoin maintenance by defendants of a funeral home on a fashionable residential street in St. Paul, the Minnesota Supreme Court said.

"Nuisances are said to be of three kinds, those which are nuisance per se [inherently], those which in their nature are not nuisances, but may become so by reason of their locality, surroundings, or the manner in which they may be conducted, and those which in their nature may become nuisances, but as to which there may be honest differences of opinion 20 R C L 383 Such may be classified as public, private and mixed nuisances.

"The proofs and finding in the present case bring the premises in question and the business therein conducted by the appellants directly within the ordinance. The question presented is whether this funeral home, conducted in the manner proposed, at the place in question, will be, in that vicinity and to the respondents, a nuisance such as the court ought to prevent and restrain. In other words whether the business conducted by the appellants is one liable to become a nuisance in a strictly residential district, if properly conducted, so that it should be abated. The trial court so found, and we think justly. The proposition is not altogether new. While a funeral home may not take on or include some of the characteristics peculiar to an undertaking establishment, such as embalming, yet it does include some of the gruesome features, and may, for the purposes herein, be considered in the same class. It has been held in a number of well-considered cases that undertaking and embalming establishments may be deemed nuisances, depending largely on the locality in which they are conducted.

"The general principles involved in these cases fully justify the conclusions arrived at by the learned trial court in the case at bar. The feelings and sentiments of the respondents are those of the ordinary normal individual living under similar conditions, that is, being compelled, by day and night to look out from their homes upon an institution devoted solely to the carrying in and out of dead bodies, and the conducting of obsequies. It is the almost universal rule that an undertaking business is not a nuisance per se, but, as generally held, the ordinary person can hardly live next door to such an establishment without becoming depressed and more or less deprived of the comforts and enjoyment of his surroundings, and when long continued it is liable to affect his general health.

"We conclude that the rule must be considered as well settled that when the prosecution of a business, of itself lawful, in a strictly residential district, impairs the enjoyment of homes in the neighborhood, and infringes upon the well-being and comfort of the ordinary, normal individual residing therein, the carrying on of such business, in such locality, becomes a nuisance, and may be enjoined. There is no fixed or arbitrary rule, however, governing cases of this kind. Each must be determined by the particular facts and circumstances therein."

The decision of the New York Court of Appeals in the case of *Rowland v Miller*, 139 New York Reports, 182, has a strong bearing on this subject, although the exclusion of an undertaking establishment from a location in New York City in that case rested on the terms of an agreement under which it was covenanted that neither the lot in question nor adjacent lots should be used for certain business purposes or for any trade or business which should be "injurious or offensive to the neighboring inhabitants."

The court decided that an undertaking establishment was prohibited by the quoted phrase. It was held that the agreement did not restrict the prohibited trades, etc., to nuisances, because no agreement was necessary in order that a nuisance might be excluded. And it was further decided that the fact that most of the premises in the locality had ceased to be used for residential purposes did not defeat the right of an owner of residential property from enforcing the agreement. The main part of the opinion of the court in this case reads:

"The business carried on by the Taylor Company is not among those kinds particularly specified in the agreement. But the claim of the plaintiff is that it is prohibited by the general clause in the agreement, as 'injurious or offensive to the neighboring inhabitants.' This clause enlarges the scope of the agreement. It is a too narrow construction to hold that it prohibits only trades or kinds of business which are nuisances per se for reasons already given, and for the further reason that nearly, if not quite, all the trades and business specially named are not such nuisances. Any kind of business may become a nuisance by the manner in which it is carried on from its location, and a business may be offensive to neighboring inhabitants, and yet fall far short of being a legal nuisance, which a court of equity will abate as such. This clause

in the agreement must have a reasonable construction. We cannot suppose that the parties had in mind any business which might be offensive to a person of a supersensitive organization, or to one of a peculiar and abnormal temperament, or to the small class of persons who are generally annoyed by sights, sounds and objects not offensive to other people. They undoubtedly had in mind ordinary, normal people, and meant to prohibit trades and business which would be offensive to people generally, and would thus render the neighborhood to such people undesirable as a place of residence. It cannot be doubted that the business of the Taylor Company was, within this definition, offensive to the neighboring residents. People of ordinary sensibilities would not willingly live next to a lot upon which such a business is carried on. An ordinary person, desiring to rent such a house, as plaintiff's, would not take her house, if he could get one just like it, at the same rent, at some other suitable and convenient place. Indeed, her house would be shunned by people generally who could afford to live in such an expensive house. The courts can take judicial notice of the offensive character of such a business. Judges must be supposed to be acquainted with the ordinary sentiments, feelings, and sensibilities of the people among whom they live, and hence, in this case, the learned judge, after the character of the business carried on by the Taylor Company had been proved, could have found, as matter of law, that it was in violation of the restriction agreement, without any further proof. It was therefore necessary for the plaintiff, upon the trial, to call witnesses from the neighborhood to give their opinions that this business was injurious and offensive. Even if such opinions were erroneously secured, they were unnecessary and harmless, as, upon, the undisputed evidence as to the character of the business carried on, the legal conclusion of the trial judge must have been the same."

The case of *Happey et al v Morrison*, 113 Southeastern Reporter, 82, decided by the Georgia Supreme Court, dealt with the right of plaintiffs to a temporary injunction restraining defendant, pending final hearing of the case, from establishing a funeral home at a given location. The court affirmed a judgment allowing such an injunction, but filed no formal opinion. All that is reported is a quotation of provisions contained in the Georgia Civil Code and a summary of the Supreme Court's conclusions, as follows:

"A nuisance is anything that worketh hurt, inconvenience, or damage to another, and the fact that the act done may otherwise be lawful does not keep it from being a nuisance. The inconvenience complained of must not be fanciful, or such as would affect only one of fastidious taste, but it must be such as would affect an ordinary reasonable man." Civ Code 1910, Sec 4457.

"Where the consequences of a nuisance about to be erected or commenced will be irreparable in damages, and such consequences are not merely possible, but to a reasonable degree certain, a court of equity may interfere to arrest a nuisance before it is completed." Civ Code 1910, Sec 4459.

"Under the pleadings and the evidence submitted on the preliminary hearing, the judge did not err in granting an interlocutory injunction until the final trial of the case before the jury, the judgment being in part as follows: 'This order shall not prevent defendant from completing this building, but he shall not maintain or carry on the business of an undertaker thereat, directly or indirectly, nor make any preparations thereat, directly or indirectly, nor make any preparations thereat or upon the premises so to do. Caskets and other equipment incident to such business which may now be stored in said building may there remain, but no other equipment, whose nature for such purpose is apparent by external appearance, shall be carried thereto, but if the defendant shall carry on an undertaker's business elsewhere he may, if he so desires, use the garage on his premises at the place in question, for the storage of his hearse or hearses, with ingress and egress with said hearses, thereto and therefrom over his own property.' It does not appear from the judgment granting an interlocutory injunction that it was based on the ground that the operation of an undertaking establishment in a residential section is a nuisance per se, and no ruling is here made on that point."

SECTION 9 WHERE STATUTE OR ORDINANCE IS INVOLVED

An ordinance which broadly forbids establishment or maintenance of undertaking establishments "within those parts of the city occupied mainly for residences," etc, is void for uncertainty as to territory, according to the decision of the North Dakota Supreme Court in the case of *Wasem v City of Fargo*, 190 Northwestern Reporter, 546.

An ordinance of defendant city was under consideration, providing that "it shall be unlawful for any person, firm or corporation to build, establish, operate, or maintain within those parts of the city of Fargo occupied mainly for residences, any morgue, undertaking parlors, room, or place used solely or mainly for the purpose of embalming."

ing, preserving, or caring for the dead, or any chapel or room used solely or mainly for funeral purposes"

Plaintiff was awarded an injunction against such enforcement of the ordinance as would prevent his use of a building as an undertaking establishment. One of the judges of the Supreme Court dissented, being of the opinion that the ordinance should apply to plaintiff on a theory that there was no claim but that it was in a district mainly devoted to residences. The important parts of the opinion of the majority are as follows.

"The express statutory authority is conferred upon the city to regulate the location of undertaking establishments. The city of Fargo has sought to exercise this authority. By the ordinance it declares, in effect, that undertaking establishments are nuisances per se if located and maintained within those parts of the city occupied mainly for residences.

"The business of undertaking, which theretofore was wholly a lawful business conducted anywhere within the city limits still remains a lawful business where it is not conducted in a place prohibited by the ordinance.

"But since the ordinance became effective, how may an owner of an undertaking establishment, desirous of obeying the law, determine whether his location now is, or yesterday was, in a lawful or unlawful place? For the test of the validity of the ordinance depends upon its universality; its universal application in determining a definite and certain restricted location. In this case the test of the validity of the ordinance is not made dependent upon proof that within a certain designated area wherein the funeral is located the properties are either mainly or wholly occupied for residences. No proof has been presented in that record.

"In determining the 'parts occupied mainly for residences,' what portion of the city around the locus in quo shall be included? What portion excluded? How much of a portion in extent, in length, in width, may be considered? What measure or rule is furnished by the ordinance through which the undertaker may determine that his location, present or prospective, is lawful? May the same location through the consideration of eight or nine blocks of surrounding and adjacent territory, by testimony of witnesses, verdict of jury, and finding of court, be made unlawful because 'occupied mainly for residences' and, through the consideration of another eight or nine blocks, likewise surrounding and adjacent, in another action, by other testimony, another verdict of the jury and finding of the court, be made lawful? If so, is the rule of guidance fixed by the ordinance or delegated to others? Defendants present no rule of ascertainment. However, they contend that there are well recognized districts in cities patent to all and capable of judicial notice, that business districts are central, residence districts suburban, that the line of demarcation can be ascertained. But the ordinance by its terms does not confine the prohibition of location to exclusive residence districts, nor award the license of lawful locality to exclusive business districts. Pursuant to the very terms of the ordinance, a location within territory, partly devoted to business purposes, may be prohibited because such territory is 'occupied mainly for residences'."

In the case of *Linsler v Booth Undertaking Co.*, 206 Pacific Reporter, 976, the Washington Supreme Court refused to enjoin as constituting a nuisance an undertaking establishment located in a district recognized by an ordinance as a legal location. This case arose in Seattle and the court said, in part:

"The undertaking business, it will be admitted, depreciates the value of nearby property for residence purposes, and also brings into the homes of those living nearby an element of discomfort and lack of repose such as would have a depressing effect upon the mind of the average person.

"The question is whether or not the existence of the undertaking establishment at the place mentioned constitutes a nuisance. That such a business is not a nuisance per se is well established, and no contention here is made otherwise. The ordinance referred to was manifestly passed in the exercise of the police power given to the city by the Constitution and the statutes in aid thereof. Section 11 of Article II of the Constitution of this state provides that any city may make and enforce within its limits all such local, police, sanitary, and other regulations as are not in conflict with general laws. This is a direct delegation of the police power as amply within its limits as that possessed by the legislature. So long as the subject-matter is local and the regulations reasonable and consistent with general laws, it is not necessary that it be supported by legislative sanction.

"It is well settled that property is held subject to the exercise of the police power and that the provisions of the Constitution forbidding laws, the effect of which is to take or damage property, have no application in such cases.

"It thus appears that the undertaking establishment here in question was authorized

by an ordinance, which ordinance is controlling unless it be inconsistent with some general law. The appellants claim that it is inconsistent with section 8309 of Remington's 1915 Code, which provides.

"Nuisance consists in unlawfully doing an act, or omitting to perform a duty, which act or omission either annoys, injures, or endangers the comfort, repose, health or safety of others, offends decency, or unlawfully interferes with, obstructs or tends to obstruct, or render dangerous for passage, any lake or navigable river, bay, stream, canal, or basin, or any public park, square, street or highway, or in any way renders other persons insecure in life, or in the use of property."

"It will be noticed by this statute that a nuisance consists in doing an act which is unlawful and which injures or endangers the comfort, repose, health, or safety of others. The business complained of being conducted in pursuance of the ordinance which has the force of a general law was not made unlawful by this statute. The statute applies to the unlawful doing of an act. If the statute were given the effect of making an undertaking business a nuisance when placed in close proximity to the residence of others, it would deprive the city of its right to exercise of police power in this regard where respondent's property was affected thereby. It is not claimed in this case that the ordinance was unreasonable and therefore should be set aside as being such. The case of *Densmore v Evergreen Camp No 147*, W. O. W., 61 Wash 230, 112 Pac 255, 31 L. R. A. (N. S.) 608, Ann Cas 1912B, 1206, is distinguishable. There, there was no ordinance of the city of Everett authorizing the undertaking establishment in the place where it was conducted, while here, as already pointed out, the respondent's business is located within the district prescribed by the ordinance for such purpose. That may be a nuisance which exists without authority of law, yet not a nuisance if so authorized."

In the case of *Koebler v Pennewell*, 75 Ohio State Reports, 278, 79 Northeastern Reporter, 471, the Ohio Supreme Court decided that a statute limiting the location of "morgues" in residential districts did not apply to undertaking establishments. The facts and reasoning under which the court acted are indicated in the following excerpt from the opinion:

"Prior to July 5th, 1903, Julius and William Koebler were engaged in the undertaking business in the city of Cleveland. On that date, having heretofore purchased the house and premises at No 1264 Willson Avenue, they established their business at that place. In the house situated on said premises, which house had formerly been a dwelling house, they selected, fitted up and thereafter maintained a chapel, in which from time to time funeral services were held and conducted, and in which the bodies of deceased persons received by them were temporarily placed and kept until their interment. From July 5, 1903, to the time of the trial of this case in the circuit court, which was more than a year and five months, the total number of bodies received by them was 26. Of these all but three had been prepared for burial before being taken to defendants' place of business, and all were taken there at the instance or request of relatives or friends of the deceased that funeral services might be held and conducted from that place. These bodies when at their establishment were placed in caskets, were kept in this chapel, or a private room adjoining the same, and were not exposed to public view except perhaps at the time when funeral services were being conducted over the remains. No unidentified or derelict body was ever in their place, and while, as found by the circuit court bodies were taken to defendants' place of business from hospitals, railroad depots and private residences, yet in every instance they were, as above stated, taken there at the request of relatives or friends, and in order that funeral services might be conducted and held at that place. That which was done by defendants in this behalf was not different from that done by persons conducting modern undertaking establishments in all the large cities of the state. These facts being undisputed, the finding and conclusion by the circuit court that the business of receiving and keeping dead bodies as carried or by defendants at their place, No 1264 Willson Avenue, constituted the establishing, keeping and maintaining a morgue, was, we think, unwarranted and erroneous."

"We believe that the word morgue as found in this section was advisedly used by the legislature, and that it clearly and appropriately defines and expresses the legislative intent as to the character of place intended to be prohibited, namely, a place where the unidentified and derelict dead are at all times received and kept and exposed to public view for the purpose of identification, thereby inviting and attracting to such place crowds of the morbid and curious who visit the place for no other purpose than that they may view the bodies there exposed. But in the absence of language requiring such construction, we can not think that the prohibition of this section was directed against, or was intended to include, the ordinary undertaking establishment conducted in the usual and customary way. If such had been the intention of the legislature, it was easy

to have expressed that intention in plain and unmistakable terms, but no such intention is expressed."

The decision in the last cited case was followed as a precedent by the Ohio Court of Appeals in the case of *Mosier v Jones et al*, decided July 5, 1923. And we understand that at the same, or about the same time, the same court reached a similar decision in the case of *Paul Huth, of Cincinnati*. The following is the full text of the court in the *Mosier Case*:

"This action is brought by certain nearby residents against the defendants, to enjoin them from locating, erecting, conducting and maintaining any funeral or undertaker's establishment upon certain premises located at the northeast corner of East Broad Street and Monroe Avenue, in the City of Columbus. The petition sets out a certain special zoning ordinance making it unlawful for any person or corporation to locate, build, or maintain any mortuary undertaker's establishment in a residential district, as defined in the ordinance, without first securing the written consent of the owners of two-thirds of the property abutting on such street for a distance of 500 feet in each direction. During the pendency of the case, the ordinance was repealed, so far as this case was concerned, and the original ordinance was not in evidence at the time of the trial in the lower court or in this court and, therefore, cannot be considered except, possibly, as to how costs may be assessed. Had such ordinance been so in evidence, then an entirely different case would have been presented to this court for its consideration.

"The petition also sets up certain facts which the plaintiffs claim would make location and establishment of the business of undertaking a nuisance per se. This is the only question to be considered. The property owned by the defendants has a frontage of 184 feet on East Broad Street and 175 feet on Monroe Avenue. The property is located in a high-class residential district and was formerly used for residence purposes. A church is located in the same block on the same side of the street and another church is located in the block opposite the property on the south side of East Broad Street. These churches, however, are not inconsistent with the residential district. East Broad Street, from High Street to Cleveland Avenue, has become a business street. From Cleveland Avenue, east on Broad Street, the abutting property is used mainly for residential purposes, although certain property is used for semi-business purposes, such as offices and the like. Other than the churches above referred to, the abutting property in the neighborhood of the property in question, and for a distance of more than two blocks westwardly, is exclusively residential. The district is also exclusively residential on Broad Street, eastwardly, with the exception of an oil-filling station at the corner of Broad and Twentieth Streets, some four blocks east of defendant's property. Monroe Avenue is exclusively residential for at least one block north and south from Broad Street. O H Mosier owns and occupies a residence on Monroe Avenue, adjacent to the rear of the Jones property, but separated by a twenty-foot alley. B G Dawes owns and occupies a residence on the northeast corner of Broad Street and Monroe Avenue. Howard M Sims owns and occupies a residence directly across Broad Street from the Jones property. Other residents in the neighborhood join with Mosier, Dawes and Sims in the petition. Whatever might be our opinion in this case upon general principles, we feel that we are bound by the decision of the Supreme Court in the cases of *State, ex rel Oil Company v Daubin*, 99 O S 406, and *Koebler v Pennewell*, 75 O S 278. The *Daubin* case passed through this court and involved a zoning ordinance as its main feature. Counsel also argued in the Court of Appeals the question of whether an oil-filling station was a nuisance per se in a residential section. The Supreme Court dissolved the injunction allowed in the Court of Appeals, upon the ground that the zoning ordinance did not apply. The case was reported in the Supreme Court but no mention is made either in the syllabus or opinion to the question of nuisance. No doubt, the Supreme Court must have been of the opinion that an oil-filling station was not a nuisance per se in the residential section, or it would not have dissolved the injunction. The oil-filling station referred to in this case was some four or five blocks east of the Jones property, on Broad Street. The case of *Koebler v Pennewell* is even more similar and conclusive. *Koebler* undertook to establish an undertaking business upon his own premises on Willson Avenue in the City of Cleveland, in a building which had formerly been used as a private dwelling. Judge Pennewell resided in the immediate neighborhood and brought an injunction suit to prevent the defendant from maintaining said undertaking establishment. The findings of fact disclosed that the undertaking establishment of *Koebler* was a general undertaking business similar to the one proposed to be conducted by the defendants here, and that the neighborhood involved in the *Koebler* case was exclusively residential. In the *Koebler* case, the finding was that the establishment of such undertaking business would materially depreciate in value the residence property in the neighborhood. The Supreme Court, in the syllabus deals only with the question of whether the business proposed to be carried on by *Koebler* was a morgue, as defined

by Section 3586-A R. S. Counsel for the defendants in the instant case presented the briefs of counsel in the Pennewell case, showing that the question of nuisance per se was argued and discussed in the Pennewell case. The Supreme Court, therefore, had before it in that case the direct question whether an undertaking establishment was or was not a nuisance per se in a residential section. Judge Crew, in the opinion, discusses the question of nuisance per se as follows:

"But on the other hand, if the finding of the Circuit Court was erroneous and unwarranted, then upon the record, there being no finding that the place was a nuisance per se nor evidence to support such finding, plaintiffs are not entitled to any relief and their petition should be dismissed."

"Counsel for plaintiffs in the instant case urge that the question of nuisance per se was not before the Supreme Court in the Koebler case, because there was no express finding that the maintenance of the undertaking place was a nuisance per se. However, we cannot escape the conclusion that the findings of fact in that case fully covered the evidential facts and upon such evidential facts the court would have been authorized to determine whether the undertaking business so proposed was or was not a nuisance per se. When, therefore, Judge Crew says that there was no finding that the place was a nuisance per se, it must necessarily be inferred that the finding of facts as to the business to be carried on in such residential district was not a nuisance per se. Besides, the Supreme Court must have examined the evidence in that case, for it expressly stated that there was neither a finding as to nuisance per se nor evidence to support such finding. We think that it is clear that the Supreme Court, in the Koebler case, must have reached the conclusion, both from the finding of facts as well as the evidence, that the maintenance of an undertaking establishment in a residential section is not a nuisance per se."

"In considering the case at bar, we have taken the evidence of Bertram G. Jones as to the character of the business to be carried on in the property described and the proposed improvements to be made to alleviate the sentimental discomfort of those who reside in the immediate neighborhood, particularly Mr. Mosier, and we are of opinion that such alterations proposed may be made. We are, therefore, of opinion that the injunction against the maintenance of the business must be dissolved and the petition dismissed. Inasmuch as the plaintiff had a good cause of action when the suit was instituted, by reason of the City ordinance then existing but since repealed, we are of opinion that the costs of the case should be assessed against the defendants."

In the case of *Osborn v. City of Shreveport*, 79 Southern Reporter, 542, the Louisiana Supreme Court decided that both under an ordinance of the city, and regardless of the ordinance, a funeral director might be restrained from establishing his place of business in a residential district in which the profession had not been previously conducted. The opinion seems to proceed, however, upon a finding that offensive odors would inevitably proceed from the establishment. The main portion of the opinion reads:

"It may be that bad cases are infrequent in plaintiff's establishment, and that the stench emitted by them is 'brought under control' as rapidly as possible; but a single experience of air so laden would, as we imagine, more than satisfy the average individual for the period of his natural life, and 15 minutes would be quite long enough for the experience."

"We find no reason to doubt that plaintiff conducts his business after the most approved methods and with as little offense to those by whom he may be surrounded as the business will admit, but, to the incidents mentioned, there is to be added the fact that the business itself is a gruesome one, and that the psychological influence of being confronted, and having one's family confronted, day after day and at all hours of the day, with death, and its woeful trappings in the shape of hearses and other vehicles, carrying in and out of a neighboring building the mortal remains of some fellow being, is no more enlivening nor wholesome than would be the constant presence of the same corpse, or the immediate proximity of a graveyard; and we take judicial notice that the introduction of such a business into a residential neighborhood, where none has previously been established, will inevitably depreciate the value of the property as well as discommode the owners."

But we find that Act 220 of 1912 (amending the charter of that city, Sec. 1, par. 21, after conferring on the council the power to 'prohibit and prevent' various specified businesses, concludes with the following language:

"All establishments where any nauseous or unwholesome business may be carried on shall be restricted to certain limits within the city, to be determined by the city council."

"And we think the business here in question is subject to the authority thus conferred."

"But even if that were not the case, and there were no ordinance upon the subject, we can, at present, see no sufficient reason why the residents of the threatened district should not be protected from plaintiff's proposed invasion, under the general provisions of law which safeguards the citizen, in his home life, not only against nuisances per se, but against occupations which become nuisances by reason of the inappropriateness of the places in which they are conducted"

Funeral establishments and funeral homes may properly be held to be nuisances in districts of a city occupied exclusively for residences, and an ordinance prohibiting them therein is valid, provided the city has been granted the authority to restrict or prohibit nuisances

In reaching the above stated conclusion in the case of *City of St. Paul v. Kessler*, 178 Northwestern Reporter, 171, the Minnesota Supreme Court virtually sealed an important point of law against the profession

In this case defendants unsuccessfully appealed from a judgment convicting them of violating an ordinance of the City of St Paul prohibiting the location and operation of undertaking establishments or funeral homes in a residence district

The following is a summary of the ordinance in question

Section 1 provides "No undertaking or embalming business shall be carried on and no funeral chapel, funeral home, vault, or other house, building, structure or receptacle for the preparation of the dead for burial or for the reception, deposit, or keeping, of the dead bodies of human beings shall be established, opened, kept or maintained in any residence district in the city of St Paul" Section 2 defines residence districts Section 3 declares a business conducted contrary to the provisions of the ordinance a nuisance, and section 4 fixes the penalty for a violation

Deciding the case in favor of the city the Supreme Court said

"In the oral argument defendants' counsel pressed most earnestly the proposition that the legislature, when it authorized cities of the first class to create residential districts (Chap 128 L 1915), took away all other modes of restricting the use of buildings or structures within the municipal territory, and further, since undertaking establishments or funeral homes are not among the structures that may be excluded from residential districts under that act, there is now no way by which they may be barred from any locality We cannot accept this view The law referred to is predicated upon a restriction or taking of private property for a public use or purpose under the power of eminent domain It does not in terms nor by implication curtail the power granted cities, expressly or by implication, to regulate and control occupations liable to become nuisances We do not think the legislature by the act mentioned intended to trench upon any police power then possessed by cities of the first class Nor does chapter 128 L 1915, undertake to prescribe what restricted residence districts shall mean in, or how they shall be created under any other law or ordinance

"The ordinance is attacked as unconstitutional in that it deprives a person of the free use of his property without due process of law It can be upheld only if its enactment is authorized by a legitimate exercise of the police power of the city And that depends on the proposition whether the occupation which it seeks to exclude from residence districts is one liable to become a nuisance even if properly conducted therein The business itself is legitimate and is a necessity The more dense the population is, the more numerous will be the deaths and funerals It is not a nuisance per se [inherently] But there are numerous occupations and businesses equally necessary and not nuisances per se that a city, acting under its police power, may, without question nowadays, exclude from residential localities because of their proneness to become injurious to health, or offensive to the senses or an obstruction to the free use of property, so as to interfere with the comfortable enjoyment of life or property, such as slaughter houses, tanneries, brick kilns, mills, laundries, livery barns, and the like In our opinion the undertaking business may be placed in the same category, and has been so placed by the courts that have passed on the subject with, possibly, one exception Upon complaints by adjoining residence owners, the carrying on of that business in districts of a city occupied exclusively by homes has been enjoined, *Densmore v Evergreen Comp* No 147 61 Wash 230, *Goodrich v Starrett*, 184 Pac 220 (Wash); *Saier v Joy*, 198 Mich 295 And in *Osborn v City of Shreveport*, 143 La 931, an ordinance has been held valid declaring it unlawful 'to maintain . . . any undertaking shop or parlor where bodies are embalmed, kept, or prepared for interment, except on the business streets of the city'

In *Rowland v Miller*, 139 N. Y 93, an undertaking business was held to come within a restrictive covenant in a deed against carrying on a trade or business which would be injurious or offensive to the neighbors In *Saier v Joy*, supra, the court did not find that there was any danger of disease being communicated from the dead, it was not so well satisfied that noxious odors might not escape from the establishment, but what seemed to move the court to grant the injunction

was chiefly that 'the maintenance of an undertaking establishment and morgue in close proximity of a home would so affect the normal mind as to render its maintenance in a strictly residential district' a private nuisance. We agree with the courts above mentioned that the ordinary normal person cannot live next door to an undertaking establishment or funeral home where dead bodies are continuously carried in and out and are kept for longer or shorter periods without thereby being more or less deprived of the comfortable enjoyment of his home. The business, then, is such that it may be regarded as a private nuisance in residence districts. The only instance to which we have been referred where an injunction was refused is *Westcott v Middleton*, 43 N J Eq 478, but it is to be noted that the locality wherein the undertaking establishment was located was in a populous part of the city, and apparently not in an exclusively residence district.

"That the city has ample power to regulate, restrict or prohibit trades or occupations that are likely to develop into nuisances or are generally considered such when carried on in certain localities, cannot well be questioned. The Charter grants the power to enact ordinances 'to define, regulate, prohibit and abate nuisances' (sub-div 6, Sec 127 charter). 'To regulate the location of stockyards, slaughter houses, rendering plants, soap factories tanneries, stables, privies, and other unwholesome or nauseous houses or places' (Sub 11, Sec 127 Charter). There are other granted powers that may be held to authorize the ordinance in question. *State v. Chicago, Mil & St Paul Ry Co*, 114 Minn 122. In 19 Rul Case Law, p 818, it is stated. 'A municipal corporation under its authorized police power, may regulate any trade, or occupation, or business, the unrestrained pursuit of which might affect injuriously the public health, morals, safety, or comfort, and in the exercise of this power particular occupations may be excluded from certain parts of the city, or may be required to be conducted within designated limits'. And under the general welfare clause, common to all city charters, it was held in *State ex rel v Houghton*, 134 Minn 226, that 'cities may also prescribe districts within which no business or occupation of a noxious or offensive character or which tends to interfere with the comfort and prosperity of others may be carried on'. In *State ex rel v Houghton*, 142 Minn 28, an ordinance excluding a cereal mill from what had been declared to be a residence district was sustained as being a proper exercise of the police power for the general welfare."

A city constitutionally may forbid the carrying on of a funeral business without a permit from the city council, held the Minnesota Supreme Court in a decision handed down October 13, 1922, in the case of *State of Minnesota v Amor & Co*, 190 Northwestern Reporter, 59. If the council arbitrarily denies a permit, the applicant has an appropriate remedy, but is not thereby justified in defying the ordinance. And a permit to conduct the business in one location does not give permission to conduct an establishment at another location.

Defendant is engaged in the undertaking business in Minneapolis. Prior to March 1, 1922, it conducted its business at 829 Second Avenue South, and had a permit from the city council to do so. It applied to the city council for a permit to conduct its business at 2300 Hennepin Avenue. The permit was refused. Defendant nevertheless conducted its business at 2300 Hennepin Avenue and prosecution was commenced, charging defendant with operating said business without a permit from the city council. Defendant was convicted and appealed.

An ordinance of the City of Minneapolis provides that no person shall maintain or use any building or place as an undertaking establishment or carry on the undertaking business without having first obtained permission from the city council authorizing the same. This is the ordinance which defendant was charged with violating. It was contended that this ordinance was unconstitutional and void, in that it vests in the council arbitrary power to say where such business may be conducted or who shall conduct it, that it abridges the privileges of the defendant as a citizen, deprives it of its property without due process of law.

Affirming the decision of the lower court, the Supreme Court said

"No particular constitutional provision is mentioned, but presumably defendant's contention has reference to the fourteenth Amendment to the Federal Constitution. This contention was determined adversely to defendant in *State v Dienberger*, 187 N W 972. It was there held, following *Fischer v St Louis*, 194 U S 361, that an ordinance providing that no person shall operate a laundry within the city without first obtaining a permit from the city council was not contrary to the Federal Constitution and that it was valid. The question of what the rights of the parties might be if the power to issue permits should be abused by arbitrary or discriminatory action was not decided. We follow the *Dienberger* case and hold the ordinance valid.

"It is contended that in the operation of this ordinance the council did arbitrarily discriminate against the defendant and defendant offered evidence intended to prove

the arbitrary character of the action of the council. This evidence was rejected and of this defendant complains. This contention was determined adversely to defendant in *State v. Rosenstein*, 148 Minn. 127. The precise question raised here was raised there and it was held that a person who is arbitrarily refused a permit to carry on an occupation doubtless has a remedy but he 'may not defy the law by doing the prohibited act, and then be heard in defense on the ground of the alleged arbitrary action of the council in refusing him a license'. The evidence was properly rejected.

"The permit which defendant obtained for carrying on its business at 829 Second Avenue South does not avail him. Location may be quite as important as personality in the granting of a permit of this character."

Brown v. City of Los Angeles, 192 Pacific Reporter, 716, passed upon by the California Supreme Court, was an action brought by the proprietor of a funeral establishment to enjoin the enforcement of an ordinance of the city of Los Angeles prohibiting the locating of such establishments at any place in the city of Los Angeles outside of certain zones. The injunction was denied, the plaintiff appealed.

A prior ordinance was enacted, on July 13, 1904, prohibiting the maintenance of undertaking establishments within the city, excepting within a certain zone specifically described in the ordinance. This zone was subsequently enlarged by amendment, until it contained some 60 blocks, including practically all of the business and some of the semi-business property in the central portion of the city. This district was about $2\frac{1}{2}$ miles long and a half a mile wide. In addition to the amendment increasing the size of this zone, other amendments to the ordinance were enacted from time to time, creating smaller districts in which the maintenance of undertaking establishments was permitted. These new zones in other portions of the city, 13 in all, with one exception, consisted of a single lot described in the amendment to the ordinance in question, and in each instance was enacted for the purpose of permitting an undertaking establishment upon such lot. The appellant had conducted an undertaking establishment within zone No. 1, but, his lease having expired, he sought a new location, and secured a lot immediately south, distant 170 feet, of the southerly boundary of zone No. 1. He applied to the city council for an amendment to the ordinance by which the property he had purchased would be excepted from the operation of the ordinance. Opposition developed in the neighborhood to such an establishment; and, although a favorable report has been made upon plaintiff's application, it was subsequently denied. Notwithstanding such denial, he erected such establishment, and conducted business at the new location. Having been frequently arrested for a violation of this ordinance, he sued to enjoin its enforcement. The trial judge dismissed the suit and the Supreme Court affirmed this ruling as being correct. The salient parts of the opinion on appeal are as follows.

"The first question that arises is as to whether or not the business being conducted by the appellant is such that its regulation properly comes within the police power of the state. No case has been called to our attention in which this matter has been expressly decided, although such an establishment has been abated as a nuisance at the instance of the property holders aggrieved thereby. The nature and extent of the police power has been so often discussed by the courts of this and other states that we deem it unnecessary to enter into any general discussion thereof, particularly in view of the fact that in his petition for rehearing the appellant concedes that the business of operating an undertaking establishment is subject to police regulation. It has been held that livery stables, laundries, soap and glue factories, carpet-beating establishments, lumber yards, brickyards, billboards, cemeteries, private hospitals for inebriate, insane, and tubercular patients are subject to regulation under the police power, and that in the exercise of such power their maintenance may be prohibited. The same reasoning which would lead to the conclusion that these establishments are subject to police regulation would also point to the conclusion that undertaking establishments are subject to such regulation, and may be prohibited in thickly settled communities and in residential districts. Inasmuch as one of the purposes of the organization of our state and federal governments is to secure to men the 'inalienable right' of 'pursuing and obtaining safety and happiness' (Const. California, Art. 1, Sec. 1), we entertain no doubt that the establishment of undertaking parlors in thickly settled communities and residential districts may constitute such an invasion of this inalienable right of the inhabitants thereof as to bring the regulation and control, and, if necessary, the prohibition thereof, within the well-recognized police power of the state.

"It is claimed, however, in this case that the ordinance is arbitrary, unreasonable, and discriminatory. Appellant thus states the issue in his petition for rehearing.

"The issue in this case upon this appeal is whether or not courts will receive evidence that in a particular case the exercise of police regulation over an acknowledged subject of such power is in fact in the particular case arbitrary and unreasonable."

"These numerous points, however, amount in substance to the claim that the location in which the appellant has established his business is no different in character and situation from the southerly portion of zone No. 1, and from the various smaller zones created by amendment to the original ordinance. With reference to these smaller zones created for the express purpose of allowing the maintenance of undertaking establishments by particular individuals, we may assume that the exercise of such authority by the city would amount to a special permit to an individual, and therefore would be an unreasonable exercise of the police power. This assumption, however, does not aid the plaintiff, for the reason that if we assume the invalidity of the amendments to the ordinance permitting the location of particular undertaking establishments outside of zone No. 1, we would still be confronted by the ordinance prohibiting undertaking establishments outside of zone No. 1, which, if valid, is being violated by the appellant in the operation of his establishment outside of this district. The attack upon the ordinance limiting the establishment of such business to zone No. 1 is based upon the proposition that territory outside of this zone is similar in every respect to that around the location selected by the plaintiff. It is also pointed out that there are vast tracts of uninhabited land contained in the annexed districts of Los Angeles city, and that the ordinance in effect prohibits the establishment of undertaking parlors in these localities. If appellant was located in this uninhabited and outlying territory he would be in a position to raise that question, but, having selected a location in the heart of the city, he is not concerned with the validity of the ordinance as affecting such outlying territory. The plaintiff's claim, then, results in this, that where there is territory outside of the district in which a business subject to police power is permitted, exactly similar to that inside the district, the ordinance fixing the boundary between these two similar districts is void because unreasonable. This, of course, cannot be the law. The Chief Justice inspected the premises, in accordance with a stipulation of the parties, and the court came to the conclusion that the ordinance was entirely unreasonable. In the present case, if the original ordinance had permitted the location of undertaking establishments in the entire city, but had required that in zone No. 1 permits should be secured before such business was established, and if the plaintiff had established his business outside of the special district where it was lawful for him so to do, and subsequently a new district had been created surrounding the property in which appellant had located his business, and in this one district alone not dissimilar in character from that in which undertaking establishments were authorized upon securing a permit, and not essentially different from the balance of the city in which the maintenance of such business was entirely unregulated, we would have a case paralleling the Curtis Case. If, on the other hand, the plaintiff had located his undertaking establishment in some remote and comparatively uninhabited part of Los Angeles city, upon property which was only valuable for use as an undertaking establishment, we would have a case paralleling *In re Throop*, supra. In this case, however, the situation is entirely different, and comes clearly within the principle enunciated in *Ex parte Hadacheck*, supra. The mere fact that outside of the permissive district there was other property similar in nature and character would not justify the court upon ascertaining that fact to substitute its judgment for the legislative judgment. The boundary line of a district must always be more or less arbitrary, for the property on one side of the line cannot, in the nature of things, be very different from that immediately on the other side of that line. In a city growing as rapidly as Los Angeles, property is constantly changing its character from residential to apartment house or semi-business and to business property. No doubt property has been purchased and occupied with a knowledge of the various zones and districts established by the legislative authorities of the city, and property in zone No. 1 is purchased with the knowledge that undertaking establishments may be located therein, and property bought outside of that district with the knowledge that, in the absence of some legislative authority therefor, such establishments cannot be maintained. This fact alone justifies the careful consideration of the council in making any modification or extension of the zones in which these establishments would be permitted, and gave weight to the protests of the property holders, which plaintiff claims resulted in the change of attitude of the council upon his application.

"We may assume the truth of the evidence offered by petitioner, that there are places outside of zone No. 1 equally adapted to the establishment of undertaking parlors, but it does not follow that this court should interfere with the discretion of the city council in fixing the boundaries of districts in a city whose population is increasing as rapidly, and whose business and residence districts are changing so constantly, as in the city of Los Angeles. We think that the proper delimitation of the zone in which undertaking parlors may be established has not been violated by so arbitrary and unreasonable exercise of legislative authority, as to justify the interposition of this court.

"It is also contended that the ordinance is unreasonable because the prohibited zones

constitute a very small part of the semi-business and semi-residence district. But, as we have already seen, that question is addressed to the legislative body of the city, and we cannot say that the mere omission of similar districts from the permitted zone is unreasonable under all the circumstances."

Chief Justice Angellotti, specially concurring, says.

"To my mind a very different case would be presented if petitioner were seeking to maintain an undertaking establishment in a different section of the city near one of the smaller permissive 'one-lot' zones, and in a place between which and such permissive zone there was no material difference. He might then well complain that the ordinance illegally discriminated against him. But such is not his situation, as is fully shown by the opinion of Justice Wilbur."

In a pamphlet lately issued by the Ohio Funeral Directors' and Embalmers' Association of Ohio it was said:

"The association believes that decisions adverse to the funeral director have been influenced by two reasons. First, that the funeral director in his fight for existence did not receive the support of the other members of his profession. Second, that the judiciary are not familiar with the great progress made in our profession during the past twenty to twenty-five years."

"The attention of the courts should especially be directed to the fact that, particularly in the larger cities, apartment houses and hotels are becoming more numerous each day—that in cases of death the funeral establishment is the only suitable place which the residents of such cities can use for conducting the last services for their loved ones; that these funeral establishments are usually the equal of the best homes in the city in which they operate."

"Statistics prove that the facilities of the funeral establishment are being used more every year and that fewer funerals are being held in churches. The public is demanding a higher class of funeral equipment each year, and nowadays will not be satisfied with anything of an inferior nature for the burial and repose of their loved ones."

"We are certain that no judge in the United States, in time of bereavement, would permit his wife, mother, father, brother, sister or other loved ones to be taken to a funeral establishment whose equipment and furnishings were not of the best. We believe he would particularly object if the location of the funeral establishment was in a zone confined to the so-called nuisance establishments. It should be readily apparent to every citizen, and especially to the Judiciary, that the service of a funeral director is as closely associated with home life as those of any physician."

CHAPTER III

TRANSPORTATION REGULATIONS

SECTION 10 PURPOSE AND VALIDITY OF REGULATIONS

A bulletin issued by the Kansas State Board of Embalming in 1920 said:

"The rules governing the transportation of dead human bodies were adopted primarily for the protection of public health. The most important thing in the rules is the disinfection of the dead body. The means of transportation and distance traveled are of secondary importance.

"All dead bodies are dangerous in some form and unless properly embalmed and disinfected become a fearful menace to public health.

"When transporting a dead body from one city or town to another city or town, by public or private conveyance (motor hearse, etc.), and shipping box is not used, shipping paster and removal permit must be secured and carried by the undertaker or party in charge as evidence that the body has been properly prepared, in case health authorities anywhere should question the cause of death and the right or authority to move or transport the body.

"The accepted meaning of the term 'transportation' with reference to dead human bodies means the moving or transporting from one city or town to another city or town and they must be prepared according to the transportation rules, shipping paster used just the same by public or private conveyance (hearse, etc.) as by common carrier, railway, express, etc.

"The transportation of human bodies dead of smallpox, Asiatic cholera, yellow fever, typhus fever, bubonic plague or any other contagious or infectious disease, when prepared under Rule No. 2 of the Transportation Rules of the State Board of Embalming of the State of Kansas, may be accepted for transportation into the following States:

Connecticut	Michigan	New Brunswick
Illinois	New York	Newfoundland
Indiana	Tennessee	Nova Scotia
Kansas	Wyoming	Ontario
Kentucky	Missouri, all except St.	Quebec
Maine	Louis	Prince Edward Island
	Canada	

"Special permission from state or provincial health authorities is necessary to ship into the following states and provinces:

Alabama	New Jersey	Idaho
North Carolina	Virginia	Alberta, Canada

"The transportation of human bodies dead from smallpox, Asiatic cholera, yellow fever, typhus fever or bubonic plague is *absolutely forbidden* in the states and provinces as follows:

Arizona	Mississippi	Utah
Arkansas	Montana	Vermont
California	Nebraska	St. Louis, Mo
Delaware	Oregon	Canada
District of Columbia	Minnesota	British Columbia
Georgia	Pennsylvania	Manitoba
Iowa	Rhode Island	Saskatchewan
Louisiana	South Carolina	Old Mexico"
Massachusetts	Texas	

The police power to protect the public health is broad enough to control the removal of dead bodies from one place to another. 29 Corpus Juris, 264, citing Commonwealth v. Goodrich, 13 Allen Reports (Mass.), 546.

See Chapter I for a Kansas decision holding that a rule of the Kansas State Board of Embalmers relating to transportation of bodies was void for unreasonableness as applied to the facts of the case before the court (202 Pacific Reporter, 619)

As to the validity of ordinances regulating the transportation of bodies, see the case of *Yeadon v. White*, 36 Pennsylvania Superior Court Reports, 360, referred to in the chapter on Death Statistics.

The importance of strict compliance with transportation regulations is illustrated by the decision of the Indiana Appellate Court in the case of *Lake Erie and Western Railway Co. v. James*, 10 Indiana Appellate Court Reports 550. These propositions were decided in this case: A railroad company is not liable in damages to a husband for refusing to receive and carry the remains of his wife, where the transit permit presented to the company does not comply with a reasonable regulation of the State Board of Health. A rule of the board requiring every dead body to be accompanied by a person in charge, who must present a transit permit from the proper health authority, giving permission for the removal, and showing the name and age of the deceased, the place and cause of death, the point to which it is to be shipped, and the names of the attending physician and the funeral director is reasonable. The omission of the name of the physician from the permit is a material one, and will justify the railway company in refusing to receive the body. The defect is not cured by pasting the certificate of the physician upon the box containing the body unless it is shown that the railway company had knowledge of that fact. The railway company is "entitled to and should require a permit complying in all essential features with the requirements of the rules, that the community at large may be properly protected from the evil results which might follow the transportation of infected bodies upon the trains."

SECTION II. TEXT OF REGULATIONS

Below we set forth four different types of transportation regulations, covering most of the states. Variations from the rules adopted as a basis for comparison are noted. Where comparison has been rendered difficult by reason of the whole text of a given state's transportation rules varying in phraseology from the regulations of other states, we have omitted that state from this chapter and placed its rules in Part II of this book. These jurisdictions include Connecticut, Delaware, District of Columbia, Illinois, Iowa, Michigan, Missouri, New Jersey, New York and Pennsylvania.

1 The transportation of bodies dead of smallpox, Asiatic cholera, yellow fever, typhus fever or bubonic plague is absolutely forbidden.

Alabama—Rule applies only to smallpox and bubonic plague

Arkansas—Rule applies only to smallpox and bubonic plague

Kentucky—Rule applies only to smallpox and bubonic plague

Louisiana—Applies only to smallpox and bubonic plague

Massachusetts—Rule provides, "except after cremation"

Mississippi—Permits transportation on permit by the secretary of the State Board of Health

Montana

Nebraska—Omits smallpox

Nevada—Applies only to smallpox and bubonic plague

New Hampshire—Applies only to smallpox and bubonic plague

North Carolina—Omits typhus fever

North Dakota—Rule applies only to smallpox and bubonic plague

Oklahoma

South Carolina—Omits yellow fever

South Dakota—Applies only to smallpox and bubonic plague

Tennessee—Rule applies only to smallpox and bubonic plague

Texas—"No body of any person dead of Asiatic cholera, bubonic plague, typhus fever or smallpox, shall be transported except in a hearse or undertaker's wagon, unless said body shall have been cremated"

2 The bodies of those who have died of diphtheria (membranous croup), scarlet fever (scarlatina, scarlet rash), measles, glanders, anthrax or leprosy shall not be accepted for transportation unless prepared for shipment by being thoroughly disinfected by (a) arterial and cavity injection with an approved disinfectant fluid, (b) disinfecting and stopping of all orifices with absorbent cotton, and (c) washing the body with the disinfectant, all of which must be done by a registered embalmer, holding a certificate as such. After being disinfected as above such body shall be enveloped in a layer of cotton not less than one inch thick, completely wrapped in a sheet and bandaged, and

encased in an air-tight zinc, tin, copper or lead-lined coffin, or iron casket, all joints and seams hermetically soldered, and all enclosed in a strong, tight wooden box; or the body, being prepared for shipment by disinfecting and wrapping as above, may be placed in a strong coffin or casket, and said coffin or casket encased in an air-tight zinc, copper or tin case, all joints and seams hermetically soldered, and all enclosed in a strong outside wooden box.

Alabama—Rule also applies to Asiatic cholera, erysipelas, yellow fever and typhus fever, and omits measles Omits last nine words of rule as above stated

Arkansas—Rule also applies to Asiatic cholera and erysipelas and omits measles

Kentucky—Applies also to Asiatic cholera, yellow fever, typhus fever, erysipelas. Omits measles Omits last nine words

Louisiana—Omits measles Adds Asiatic cholera, yellow fever and typhus fever. Omits last nine words Adds requirement that eight hours elapse between embalming and shipment

Massachusetts

Mississippi—Omits measles Adds cerebro-spinal meningitis, and requires that all wooden boxes be provided with sufficient handles.

Montana—Omits measles, and requirement for layer of cotton

Nebraska—Add smallpox Omits measles.

Nevada—Omits measles Adds Asiatic cholera, yellow fever and typhus fever. Omits last nine words

New Hampshire—Omits measles. Adds Asiatic cholera, yellow fever, typhus fever and erysipelas Omits last nine words and provides "For interstate transportation under this rule only embalmers holding a license issued or approved by the state board of embalming examiners, after examination, shall be recognized as competent to prepare such bodies for shipment"

North Carolina—Omits measles

North Dakota—Applies also to Asiatic cholera, erysipelas, yellow fever, typhus fever, "or other highly communicable diseases" Omits last nine words of rule as above stated.

Oklahoma—Omits measles Adds cerebro-spinal meningitis Instead of last sentence of rule above stated, rule reads "After being disinfected as above, such body shall be encased in an air-tight zinc, tin, copper or lead lined coffin or iron casket, all joints and seams hermetically soldered, and all enclosed in a strong, outside wooden box"

South Carolina—Omits measles Adds epidemic cerebro-spinal meningitis, or spotted fever, anterior poliomyelitis and infantile paralysis

South Dakota—Adds Asiatic cholera, yellow fever, typhus fever, and erysipelas Omits measles.

Tennessee—Omits requirement for wrapping body

Texas—(Rule 71) Omits measles, and requirement for envelopment in cotton and sheet

3 Bodies dead of typhoid fever, phthisis, puerperal fever, erysipelas, tuberculosis, or other dangerous communicable diseases, other than those specified in Rules 1 and 2, may be received for transportation when prepared for shipment by filling cavities with an approved disinfectant, washing the exterior of the body with the same, stopping all orifices with absorbent cotton, and enveloping the entire body with a layer of cotton not less than one inch thick, and all wrapped in a sheet and bandaged, and encased in an air-tight coffin or casket; provided, that this shall apply only to bodies which can reach their destination within 48 hours from time of death In all other cases such bodies shall be prepared for transportation in conformity with Rule 2 But when the body has been prepared for shipment by being thoroughly disinfected, and arterially and cavity embalmed by a registered embalmer, the air-tight sealing and bandaging with cotton may be dispensed with

Alabama—Omits phthisis and erysipelas, and "other dangerous communicable diseases" Adds measles Applies only to bodies that can reach destination within 30 hours

Arkansas—Omits phthisis and erysipelas and includes cerebro-spinal meningitis and infantile paralysis Omits requirements for wrapping body Thirty-hour transportation limit instead of 48

Kentucky—"3 The bodies of those dead of typhoid fever, puerperal fever, tuberculosis or measles, may be received for transportation when prepared for shipment by arterial and cavity injection with an approved disinfecting fluid, and washing the exterior

of the body with the same, which must be done by a licensed embalmer holding a certificate as provided for in Rule 2"

Louisiana—Adds measles Omits phthisis and words "or other dangerous communicable diseases" Thirty-hour transportation limit instead of 48

Massachusetts

Mississippi—Omits phthisis and last sentence of rule Adds measles

Montana—Omits phthisis Adds Spanish influenza and measles Omits requirement in last sentence of above rule for air-tight sealing

Nebraska—Includes measles Omits phthisis, "and other communicable diseases," etc.

Nevada—Omits phthisis and erysipelas, and words "or other dangerous communicable diseases" Thirty-hour transportation limit instead of 48

New Hampshire—Omits phthisis, erysipelas, and the phrase, "or other dangerous communicable diseases," etc Adds measles. Thirty-hour transportation limit instead of 48

North Carolina—Adds measles Omits phthisis

North Dakota—Omits phthisis and erysipelas, and requirement for wrapping, etc. Applies regardless of transportation time Sufficient to encase body in strong coffin or casket and enclose same in strong outside wooden box

South Carolina—Omits phthisis Adds measles The proviso reads "Provided, That this shall apply only to bodies which can reach their destination within 48 hours from time of death In all other cases such bodies shall be prepared for transportation in conformity with Rule 4 [2], the air-tight sealing may be dispensed with"

South Dakota—Applies only to typhoid fever, puerperal fever, tuberculosis and measles Thirty-hour transportation limit instead of 48

Tennessee—[Rule provides that bodies dead of typhoid, puerperal fever, measles, epidemic cerebro-spinal meningitis and acute anterior poliomyelitis (infantile paralysis) may be received for transportation when prepared as provided in Tennessee Rule 2 Air-tight sealing may be omitted]

Texas—(Rule 72) Omits phthisis and includes measles. Omits requirements for envelopment of body in cotton and sheet

4 The bodies of these dead from any cause not stated in Rules 2 and 3 may be received for transportation when encased in a sound coffin or casket, and enclosed in a strong outside wooden box, provided they can reach their destination within 48 hours from the time of death If the body cannot reach its destination within 48 hours from time of death, it must be prepared for shipment by arterial and cavity injection with an approved disinfecting fluid, washing the exterior of the body with the same and enveloping the entire body with a layer of dry cotton not less than one inch thick, and all wrapped in a sheet securely fastened and encased in an air-tight coffin or casket But when the body has been prepared for shipment by being thoroughly disinfected by a licensed embalmer, as defined in Rule 2, the air-tight sealing and bandaging with cotton may be dispensed with

Alabama—Transportation time limit 30 hours, instead of 48. Provides for "metallic coffin or casket or an air-tight metal-lined box"

Arkansas—Transportation limit, 30 hours, instead of 48 Wrapping, etc., not required

Kentucky—"4 The bodies of those dead from any cause not stated in Rules 2 and 3 may be received for transportation when encased in a sound coffin or casket, enclosed in a strong outside wooden box, provided they can reach their destination within 30 hours from the time of death If the body cannot reach its destination within 30 hours from the time of death, it must be prepared for shipment by arterial fluid, and washing the exterior of the body with the same by a licensed embalmer, as defined and directed in Rule 2"

Louisiana—30-hour limit, instead of 48

Massachusetts—

Mississippi—Rule fixes destination limit of 30 hours, instead of 48 Applies to diseases that are not contagious, infectious or communicable Cavity injection only required Omits last sentence

Montana—Transportation limit, 30 hours Arterial injection and cotton envelopment not required

Nebraska—Applies to diseases that are not contagious, infectious or communicable Destination time limit, 30 hours instead of 48

Nevada—30-hour limit instead of 48

New Hampshire—30-hour limit instead of 48 Provides for "air-tight metallic coffin or casket or an air-tight metal-lined box"

North Carolina—Transportation limit, 30 hours instead of 48.

North Dakota—No transportation time limit Wrapping, etc., not required After

disinfection, etc., body may be placed in strong coffin or casket encased in strong wooden box

Oklahoma—(Rule 3) Merely provides for embalming, placing in sound coffin or casket encased in strong wooden box, with embalming certificate attached

South Carolina—Rule reads 6 The bodies of persons who have died of diseases that are not contagious, infectious, or communicable, or who have died from accident or violence, may be prepared for transportation and accepted for transportation or transported, when encased in a sound, substantial coffin or casket, and the same inclosed in a strong, outside wooden box, provided in each instance, that such body can be reasonably expected to reach its destination within thirty hours from the time of death, then and in that event, the body must be prepared for shipment by filling cavities with an approved disinfectant, washing the exterior of the body with same, stopping all orifices with absorbent cotton and enveloping the entire body in a layer of cotton not less than one inch thick, and all wrapped in a sheet and bandaged, and encased in an air-tight coffin or casket But when the body has been prepared for shipment by being thoroughly disinfected by a licensed embalmer, holding a certificate as in Rules, the air-tight sealing may be dispensed with

South Dakota—Transportation limit, 30 hours

Tennessee—Transportation limit, 30 hours Rule merely requires sound coffin or casket enclosed in strong wooden box, unless transportation exceeds 30 hours, in which case Tennessee Rule 3 applies

Texas—(Rule 73) Applies to diseases not contagious, infectious or communicable. Destination time limit, 30 hours instead of 48 Cavity injection only required Envelopement and wrapping not required.

5 In the shipment of bodies dead from any disease named in Rule 2, such body must not be accompanied by persons or articles which have been exposed to the infection of the disease, unless certified by the health officer as having been properly disinfected

Before selling ticket, agent should carefully examine the transit permit and note the name of the passenger in charge, and of any others proposing to accompany the body and see that all necessary precautions have been taken to prevent the spread of the disease The transit permit shall in such cases specifically state who is authorized by the health authorities to accompany the remains In all cases where bodies are forwarded under Rule 2, notice must be sent by telegraph by the shipping embalmer to the health officer, or, when there is no health officer, to other competent authority at destination, advising the date and train on which the body may be expected

Alabama Arkansas Kentucky Louisiana

Mississippi—5 In case of contagious, infectious, or communicable disease, the body must not be accompanied by persons or articles which have been exposed to the infection of the disease, unless certified by the health officer as having been properly disinfected In all cases where bodies are forwarded under Rule 2, notice must be sent by telegraph to the health officer at the destination, advising the date and train on which the body may be expected This notice must be sent by or in the name of the health officer at the initial point, and is to enable the health officer at destination to take all necessary precautions at that point

Massachusetts—Applies to all cases of contagious, infectious and communicable diseases Omits last sentence of above rule

Montana—Applies to all contagious, infectious and communicable diseases Notice to be sent by or in name of health officer

Nebraska—Applies to contagious, infectious and communicable diseases Telegraphic notice to be sent by or in name of health officer

Nevada—Includes only first sentence

New Hampshire

North Carolina—Applies to all contagious, etc., diseases Notice to be sent by or in name of health officer

North Dakota

Oklahoma—Applies to all contagious, etc., diseases Notice to be sent by or in name of health officer

South Carolina—Rule 7 reads In the case of the transportation of the bodies of persons who have died of contagious, infectious or communicable diseases, the body must not be accompanied by persons or articles which have been exposed to the infection of the disease, unless certified by the health authorities to have been properly disinfected, and before selling transportation ticket agents shall carefully examine the outside container in which the body is being transported or offered for shipment, and carefully observe and note whether there are any indications that any of the foregoing rules and regulations have not been complied with, and such ticket agent shall carefully

examine the transit permit and note the name of the passenger in charge, and of any others proposing to accompany the body, and such body shall not be accepted for transportation, if such examination discloses the fact that any of these rules and regulations have not been complied with. The transit permit shall specifically state the name of the person who is authorized by the public health authorities to accompany the body. In all cases where bodies are being transported under Rule 4 [2], notice shall be sent by telegraph by the undertaker who prepares the body for shipment to the local health officer at the destination of the body, advising such officer of the date, route and train on which the body may be expected to arrive.

South Dakota.

Tennessee

Texas—(Rule 74) Applies to contagious and infectious diseases. Telegraphic notice to be sent by or in the name of health officer.

6. Every dead body must be accompanied by a person in charge, who must be provided with a passage ticket and also present a full first-class ticket marked "corpse" for transportation of the body, and a transit permit showing physician's or coroner's certificate, name of deceased, date and hour of death, age, place of death, cause of death, and all other items of the standard certificate of death recommended by the American Public Health Association and adopted by the United States Census Bureau, as far as obtainable, including health officer's or registrar's permit for removal, whether a communicable or a non-communicable disease, the point to which the body is to be shipped, and when death is caused by any of the diseases specified in Rule 2, the names of those authorized by the health authorities to accompany the body. Also the undertaker's certificate as to how the body has been prepared for shipment. The transit permit must be made in duplicate, and the signature of the physician or coroner, health officer and undertaker must be on the original and duplicate copies. The undertaker's certificate and paster of the original shall be detached from the transit permit, and securely fastened on the end of the coffin box. All coffin boxes must be provided with at least four handles. The physician's certificate and transit permit shall be handed to the passenger in charge of the corpse. The whole duplicate copy shall be sent to the official in charge of the baggage department of the initial line, and by him to the secretary of state or provincial board of health of the state or province from which said shipment is made.

Alabama

Arkansas—Omits requirement for coffin box handles. Provides for tacking or unfolded transit permit on box.

Kentucky—Omits last sentence and provides: "The physician's certificate and transit permit shall be placed in an envelope, which envelope is to be securely tacked on the coffin box."

Louisiana

Massachusetts—Rule reads: "Every dead body must be accompanied by a person in charge, who must be provided with a passage ticket, also check ticket, first section to be retained by railroad agent issuing same, second section to be given to person accompanying body, and third section (with cord) to be attached to box containing body, also a transit permit with undertaker's certificate, name of deceased, date of death, age, place of death, cause of death, the point to which the body is to be shipped, and the name of the person or persons authorized to accompany the body. The undertaker's certificate and paster shall be detached from the transit permit and pasted on the casket box. The transit permit shall be handed to the passenger in charge of the body. The first coupon shall be detached by the official in charge of the baggage department of the initial line."

Mississippi—6. Every dead body must be accompanied by a person in charge, who must be provided with a passage ticket and also present a full first-class ticket marked "corpse," for the transportation of the body, and a transit and removal permit issued by the local registrar of the incorporation or voting precinct in which the death occurred, showing name of deceased, date and hour of death, color, sex, age, place of death, cause of death, and the point to which the body is to be shipped.

Montana

Nebraska—Rule applies when body is shipped as "baggage." Omits requirement for coffin box handles.

New Hampshire—Omits last sentence.

North Carolina—Omits requirement for coffin box handles.

North Dakota

Oklahoma—Omits requirement for coffin box handles.

South Carolina.

South Dakota

Tennessee—Language varies somewhat, although not substantially, except that

instead of last five sentences of above rule, Tennessee rule reads "The transit permit, unfolded, must be securely tacked on the top of the outside wooden box The removal permit shall be handed to the passenger in charge"

Texas—An additional rule provides When it may become necessary to transfer dead bodies in transit from one railway train to another, or from one station to another, or from a station to a ferry, the affidavit of the undertaker and permit of all local health officers accompanying the remains shall be in all cases sufficient authority for such transfer.

7 When bodies are shipped by express a transit permit as described in Rule 6 must be made out in duplicate The undertaker's certificate and paster of the original shall be detached from the transit permit and securely fastened on the coffin box The physician's transit permit shall be attached to and accompany the express waybill covering the remains, and be delivered with the body at the point of destination to the person to whom it is consigned The whole duplicate copy shall be sent by the forwarding express agent to the secretary of state or provincial board of health of the state or province from which shipment was made.

Alabama

Kentucky—Omits last sentence

Louisiana

Mississippi—Same as Tennessee

Montana—Rule reads "When dead bodies are shipped by express, the transit permit must be made in triplicate, and the signature of the physician or coroner, local registrar and undertaker must be on all three permits Of these transit permits, one copy shall be securely fastened upon the outside of the box, one copy shall be forwarded by the express agent to the party to whom the body is shipped, and one copy shall be forwarded by the express agent to the Secretary of State or Provincial Board of Health of the State or Province from which said shipment was made."

Nebraska—Substantially same as Oklahoma

New Hampshire—Omits requirement for duplicate transit permit.

North Carolina—Rule reads same as Montana rule

North Dakota

Oklahoma—Rule reads "When dead bodies are shipped by express the whole original transit permit shall be pasted upon the outside box and the duplicate forwarded by the express agent to the Secretary of State or Provincial Board of Health of the State or Province from which said shipment was made"

South Carolina—Substantially same as Tennessee.

South Dakota

Tennessee—Rule reads. "When dead bodies are shipped by express the removal permit and transit permit shall be tacked unfolded upon the top of the outside wooden box"

Texas—(Rule 76) Substantially same as Oklahoma

8 Every disinterred body, dead from any disease or cause, shall be treated as infectious, or dangerous to the public health, and shall not be accepted for transportation, unless said removal has been approved by the state or provincial health authorities having jurisdiction where such body is disinterred, and the consent of the health authorities of the locality to which the corpse is consigned has first been obtained, and all such disinterred remains, or the coffin or casket containing the same, must be wrapped in a woolen blanket thoroughly saturated with 1-1000 solution of corrosive sublimate, and enclosed in a hermetically soldered zinc, tin or copper-lined box But bodies deposited in receiving vaults shall not be treated and considered the same as buried bodies when originally prepared by a licensed embalmer as defined in Rule 2, and as directed in Rule 2 or 3 (according to the nature of disease causing death), provided shipment takes place within 30 days from the time of death The shipment of bodies prepared in the manner above directed by licensed embalmers from receiving vaults may be made within 30 days from time of death without having to obtain permission from the health authorities of locality to which the body is consigned After 30 days the casket or coffin box containing said body must be enclosed in a hermetically soldered box.

Alabama

Arkansas

Kentucky

Louisiana

Massachusetts—Rule 7 reads "Every disinterred body, dead from any disease or cause, shall be treated as infectious or dangerous to the public health, and shall not be accepted for transportation unless said removal has been approved by the board of health; and all such disinterred remains shall be enclosed in a hermetically sealed (soldered) (if out of State) zinc, tin or copper-lined coffin or box Bodies deposited in receiving vaults will be treated and considered the same as buried bodies, unless to be interred in same cemetery"

Mississippi—Every disinterred body, dead from any disease or cause, shall be

treated as infectious or dangerous to the public health, and shall not be accepted for transportation unless said removal has been approved by the Secretary of the State Board of Health and the local health officer, and the consent of the health authorities of the locality to which the corpse is consigned has first been obtained; and all such disinterred remains shall be inclosed in a hermetically sealed (soldered) zinc, tin or copper lined coffin or box. Bodies deposited in receiving vaults will be treated and considered the same as buried bodies. All such bodies must be prepared in conformity with Rule 2.

Montana—Rule same as Massachusetts, except words "(if out of state)" and "unless to be interred in same cemetery," are omitted.

Nebraska—Same as Massachusetts.

Nevada—(Rule 5). Rule 6 reads: "Disinterred bodies, dead from any cause defined in Rule 2, may be disinterred and received for transportation at any time, provided that said removal has first been approved by the Nevada State Board of Health and the local health officer within whose jurisdiction said shipment is made. For interstate transportation, permission must first be obtained from the health authorities of the locality to which the body is consigned.

"All bodies dead of any disease mentioned in Rule 2 may be received for transportation at any time, provided said body has been prepared strictly in accordance with Rule 5; all of which must be done by an embalmer holding a certificate as such from the State Board of Embalmers of Nevada, provided by law."

New Hampshire

North Carolina—Rule substantially same as Massachusetts, except that words "(if out of state)" and "unless to be interred in same cemetery," are omitted.

North Dakota

Oklahoma—Rule same as Massachusetts, except that words "(if out of state)" and "unless to be interred in same cemetery," are omitted.

South Carolina—Rule 10 reads. "No corpse which has been buried shall be disinterred, except under authority of the Board of Health and strictly in accordance with the terms of a permit in writing to be issued by the State Board of Health authorizing such disinterment, which may be authorized in proper cases, and such permits may be issued by physicians or coroners throughout the State, who are authorized in writing by the State Board of Health to issue such permits, and every such disinterred body, no matter what the cause of death, shall be treated as infectious and dangerous to the public health, and shall not be accepted for transportation, unless such transportation has been approved and authorized by the State Board of Health, or the authorized agent of said Board, and all such disinterred bodies shall be inclosed in hermetically sealed (soldered) zinc, tin, or copper-lined coffin or box. Bodies which have been deposited in receiving vaults, upon being removed therefrom, will be treated and considered in all respects as disinterred bodies, and are within the terms of this rule."

South Dakota

Tennessee—Rule reads "Disinterred bodies of persons who have died of any disease or cause shall be treated as infectious or dangerous to the public health, and shall not be received for transportation within, or removed from this State unless said removal has been approved by the Secretary of the State Board of Health; and no such dead body shall be shipped into Tennessee without the approval of the health authorities having jurisdiction of the place where such body is disinterred, and no such body shall be transported, received or buried in this State unless satisfactory evidence of compliance with the rules of this Board respecting the same shall be submitted to the Secretary of the State Board of Health and his written consent obtained to such transportation, receipt or burial. All such disinterred remains shall be enclosed in an hermetically soldered zinc, tin or copper-lined box. But bodies deposited in receiving vaults shall not be treated the same as buried when originally prepared by a licensed embalmer as defined in Rule 2, provided the shipment takes place within thirty days from the time of death. The shipment of bodies prepared in the manner above directed by a licensed embalmer, from receiving vaults, may be made within thirty days from the time of death without the necessity of obtaining permission from the health authorities of the locality to which the body is consigned. After thirty days the casket or coffin containing said body must be enclosed in an hermetically soldered box."

Texas—Substantially same as Massachusetts.

9 The bodies of all persons who die in New Hampshire that are to be shipped by public conveyance, even though the initial point of such shipment be a railway station outside the state, must be prepared and forwarded in accordance with the regulations in force in the state of New Hampshire.

New Hampshire.

11. Any person who knowingly violates any of the rules and regulations herein

set forth for the preparation of bodies for transportation, or who accepts for transportation the body of any deceased persons, otherwise than in accordance with these rules and regulations, shall be prosecuted in accordance with the provisions of the Act of the General Assembly of South Carolina above referred to, and any undertaker and embalmer, or individual, firm or corporation, acting as such, who shall offer for transportation the body of any deceased person, transportation of which is forbidden by these rules and regulations, or which body shall not have been prepared for shipment strictly in accordance herewith, shall be prosecuted for violation of this Act, and in addition to such prosecution, any license which may therefore have been issued to such undertaker or embalmer, whether individual, partnership, or corporation, shall be revoked and cancelled

In addition to the other certificates above referred to any undertaker or embalmer who prepares the body of any deceased person for transportation in accordance with these rules and regulations, shall, in case such body be that of a person who died from any contagious, infectious, or communicable disease, firmly attach to the outer container of such body in a conspicuous position a card or paper upon which shall be plainly written or printed a statement to the effect that the body therein contained is that of a person who died from an infectious disease, which disease shall be named in such certificate, and notifying all persons that it is unlawful to open the container to which said notice is attached, and that such container shall not be opened save with permission under penalty of such punishment as is provided by law, and thereafter it shall be unlawful to open such container save on written authority from the State Board of Health, or from some member thereof, or from some coroner or public health officer, and if any person or persons shall be guilty of a misdemeanor and the violation of these rules and regulations, and upon conviction thereof shall be punished in accordance with the provisions of the Act above referred to, and it shall be unlawful for any to attach such certificate as is last above referred to, to any box or container in which is the body of a deceased person, and then in such case as is required by these rules and regulations, and any person attaching such certificate to any box, coffin, or container of any sort or description other than in the case aforesaid shall be held to have violated these rules and regulations, and shall be punished in accordance with the provisions of the Act above referred to

II

South Carolina

Rule 1 A transit permit and transit label issued by the proper health authorities shall be required for each dead body transported by common carrier

The transit permit shall state the name, sex, color and age of the deceased, the cause and date of death, the initial and terminal points, the date and route of shipment, a statement as to the method of preparation of the body, the date of issuance, the signature of the undertaker, the signature and official title of the officer issuing the permit

The transit label shall state the place and date of death, the name of the deceased, the name of the escort or consignee, the initial and terminal points, the date of issuance, and the signature and official title of the officer issuing the permit and shall be attached to the outside case

Indiana.

Maine Rule reads "1 A copy of the original death certificate, signed by the attending physician, a permit from the town or city clerk or local registrar, and a transit label signed by the shipping funeral director and the initial baggage agent, printed on strong paper, supplied by the State Board of Health, shall be required for the transportation by common carriers of the bodies of the persons who have died in this State. The death certificate shall contain such information, if obtainable, as is required in the form of death certificate which is furnished by the department of Vital Statistics. The permit of the town or city clerk shall authorize the transportation of the body of the person described in the physician's certificate. The shipping funeral director shall state on the shipping label how the body is prepared and the local baggage agent shall state thereon the route and the name and address of the escort. The physician's permit and that of the town or city clerk shall be given to the escort to be delivered with the body at destination. The shipping label shall be securely attached to the outside case. If the body is sent by express, the physician's certificate, and the permit shall be attached to the express way-bill, and delivered with the body at the destination, and the shipping label shall be attached to the outside case"

Maryland

Ohio

Vermont—Rule reads

"1 A transit permit and a transit label issued by the local health officer, deputy

health officer or the town clerk shall be required for each dead body transported by a common carrier

"The transit permit shall contain a copy of the certificate of death. The transit permit shall also state the date of issuance, the place to which the body is to be removed for burial and, if death was due to a contagious or communicable disease, shall include the name of the person authorized to accompany the body

"The transit label shall state the name of the deceased, the initial and terminal points, a statement of the method of the preparation of the body, the name of the escort or the consignee and shall bear signature of the undertaker. The transit label shall state the date and the route of shipment. The transit label shall be attached to the outer box or case"

West Virginia

Wisconsin

2 The transportation of bodies dead of smallpox, plague, Asiatic cholera, typhus fever, diphtheria (membranous croup, diphtheritic sore throat), scarlet fever (scarlet rash, scarlatina) shall be permitted only under the following conditions

The body shall be thoroughly embalmed with an approved disinfectant fluid by an embalmer licensed in the state, or in the state in which the death occurred, all orifices shall be closed with absorbent cotton, the body shall be washed with the disinfectant fluid, enveloped in a sheet saturated with the same, and placed at once in the coffin or casket which shall be immediately closed, and the coffin or casket, or the outside case containing the same shall be metal or metal lined, and hermetically and permanently sealed

Indiana—(Rule 56)

Maine—Also includes yellow fever, erysipelas and anthrax

Maryland

Ohio

Vermont

West Virginia

Wisconsin Adds erysipelas, anthrax and glanders

3 The transportation of bodies dead of any diseases other than those mentioned in Rule 2 shall be permitted under the following conditions

(A) When the destination can be reached within twenty-four hours after death the body, if embalmed by an embalmer licensed in the state, shall be placed in a casket or coffin, and encased in an outside case of substantial construction. If not embalmed, the body shall be placed in a casket or coffin which shall be encased in a strong outer box made of good sound lumber, not less than seven-eighths of an inch thick, all joints must be tongued and grooved, top and bottom, put on with cleats or cross-pieces, all put securely together, and be tightly closed with white lead, asphalt varnish or paraffin paint, and a rubber gasket placed on the upper edge between the lid and box

(B) When the destination cannot be reached within twenty-four hours after death, the body shall be thoroughly embalmed and the coffin or casket placed in an outside case of substantial construction

Ohio

Indiana—Rule (57) reads The transportation of bodies dead of any disease other than those mentioned in Rule 56 shall be permitted under the following conditions

(a) When the destination can be reached within twenty-four hours after death, the coffin or casket shall be encased in a strong outer box made of good sound lumber not less than seven-eighths of an inch thick, all joints must be tongued and grooved, top and bottom put on with cleats or cross-pieces, and all put securely together

(b) When the destination can not be reached within twenty-four hours after death, the body shall be thoroughly embalmed and the coffin or casket placed in an outside case constructed as provided in paragraph (a)

Maine—Rule reads 3 The transportation of bodies dead of any disease other than those mentioned in Rule 2 shall be permitted under the following conditions

a. When the destination can be reached within twenty-four hours after death, the coffin or casket shall be enclosed in a strong, outside box made of good sound lumber, not less than seven-eighths of an inch thick, all joints must be tongued and grooved, top and bottom, put on with cleats or cross-pieces, all put securely together, and be tightly closed with white lead, asphalt varnish or paraffin paint, and a rubber gasket placed on the upper edge between the lid and box, provided, however, that caskets containing embalmed bodies may be shipped to points in this state in tight ordinary casket boxes, and provided further that bodies addressed to the Anatomical Board of this state may be received for shipment when prepared in such manner as the State Board of Health may direct.

b. When the destination can not be reached within twenty-four hours after death, the body shall be thoroughly embalmed, and the coffin or casket placed in a strong, well-made outside shipping case

Maryland—Rule reads 3 The transportation of bodies dead of any cause other than those mentioned in Rule 2 shall be permitted under the following conditions:

(A) When the destination can be reached within twenty-four hours after death, the coffin or casket shall be encased in a strong outer box made of good, sound lumber, not less than seven-eighths of an inch thick, all joints must be tongued and grooved, top and bottom, put on with cleats or cross-pieces, all put securely together, and be tightly closed with white lead, asphalt varnish or paraffin paint, and a rubber gasket placed on the upper edge between the lid and box

(B) When the destination can not be reached within twenty-four hours after death, the body shall be thoroughly embalmed and the coffin or casket placed in an outside case constructed as provided in paragraph (A)

Vermont—Rule reads 3 The transportation of bodies dead of any disease other than those mentioned in Rule 2 shall be permitted under the following conditions

(a) When the destination can be reached within thirty hours after death, the coffin or casket shall be encased in a strong outer box, made of good, sound lumber, not less than seven-eighths of an inch thick. All joints shall be securely put together and the box tightly closed. Either the coffin or casket, or the outer box, or case, shall be water-tight

(b) When the destination can not be reached within thirty hours after death, the body shall be thoroughly embalmed and the coffin or casket placed in an outside case, constructed as provided in paragraph (a)

(c) All bodies subject to transportation shall be thoroughly embalmed when, in the opinion of the health officer, such procedure is deemed necessary

West Virginia—Rule reads The transportation of bodies dead of any disease other than those mentioned in Rule 2 shall be permitted under the following conditions

(a) When the destination can be reached within twenty-four hours after death, the coffin or casket shall be encased in a strong outer box made of good, sound lumber, not less than seven-eighths of an inch thick, all joints must be tongued and grooved, top and bottom, put on with cleats or cross-pieces, all put securely together, and be tightly closed with white lead, asphalt varnish, or paraffin paint, and a rubber gasket placed on the upper edge between the lid and box

(b) When the destination cannot be reached within twenty-four hours after death, the body shall be thoroughly embalmed and the coffin or casket placed in an outside case constructed as provided in paragraph (a) Except that casket containing embalmed bodies may be shipped between points within this state in regular casket boxes

Wisconsin—Paragraph A reads (A) Bodies dead of any disease other than those mentioned in Rule 2 may be received for transportation when encased in a sound coffin or casket, and enclosed in a strong outside wooden box, provided they can reach their destination within twenty-four hours after death

Rule 4 No disinterred body dead from any disease or cause shall be transported by common carrier unless approved by the health authorities having jurisdiction at the place of disinterment, and transit permit and transit label shall be required as provided in Rule 1.

The disinterment and transportation of bodies dead of diseases mentioned in Rule 2 shall not be allowed except by special permission of the health authorities at both places of disinterment and the point of destination

All disinterred remains shall be enclosed in metal or metal-lined boxes and hermetically sealed, providing that bodies in a receiving vault when prepared by licensed embalmer shall not be regarded as disinterred bodies until after the expiration of thirty days

Rule 5 The outside case may be omitted in all instances when the coffin or casket is transported in hearse or undertaker's wagon

Rule 6 Every outside case shall bear at least four handles, and when over 5 feet 6 inches in length shall bear six handles

Rule 7 An approved disinfectant fluid shall contain not less than 5 per cent of formaldehyde gas. The term "embalming" as employed in these rules shall require the injection by licensed embalmers of not less than 10 per cent of the body weight, injected arterially in addition to the cavity injection, and twelve hours shall elapse between the time of embalming and the shipment of the body

Indiana

Maine—Rule 7 fixes ten hours

Maryland—Violation of rules punishable by \$10-\$100 fine

Ohio—Six-hour limit fixed by Rule 7, instead of twelve

Vermont—No embalming time limit

West Virginia

Wisconsin

62. When corpses are shipped into Indiana from other states, burial permits may be

issued by officer or deputy at place where they are received. Said permit will be based upon the data of transit permit. A record of such permit is to be kept by local health officer, but no report made to the state board.

Indiana

9 The bodies of those dead of smallpox, bubonic plague, Asiatic cholera, yellow fever, typhus fever, diphtheria (membranous croup), scarlet fever (scarlatina), scarlet rash, measles, erysipelas, glanders, anthrax or leprosy, shall not be accepted for transportation to medical colleges.

10 The bodies of those dead from puerperal fever, tuberculosis, typhoid fever, or any other diseases not mentioned in Rule 9, may be received for transportation to medical colleges when prepared for shipment by the washing of the body with disinfecting fluid, the closing of all orifices, the wrapping of the body in absorbent cotton and the enclosing of it in a sheet soaked in bichloride of mercury 1:500. Bodies thus prepared must be enclosed in a sound coffin or casket encased in a strong outside wooden box with handles. All such bodies must reach their destination within sixty hours after death. As soon as received at the medical college the body must be at once carefully embalmed by the injection of a preserving and disinfecting fluid into the blood vessels.

11 When disinterred bodies are removed from one cemetery to another, or from one part of a cemetery to another part of the same cemetery, and transported by private conveyance, the written consent of the health officer of the district where the body is buried and the health officer of the town, village or city where the body will be reinterred shall be sufficient authority for the removal.

III

Wisconsin

1 A copy of the original death certificate on the standard certificate of death form, signed by attending physician, permit of local registrar of vital statistics, and a transit label signed by the shipping undertaker or embalmer and initial baggage agent, printed on strong paper, supplied through the State Board of Health, shall be required for the transportation by common carriers of bodies of persons dying in this state. The death certificate shall contain such information as is required in the standard form of death certificate, if obtainable. The registrar's permit shall authorize the transportation of the body of the person described in the physician's certificate. The shipping undertaker or embalmer shall state on the shipping label how the body is prepared, and the local baggage agent shall state thereon the route and name and address of escort.

The physician's and registrar's permit shall be given the escort, to be delivered with the body at destination. The shipping label shall be securely attached to the outside case. If the body is sent by express, the physician's certificate and the registrar's permit shall be attached to the express way-bill and delivered with the body at the destination, and the shipping label shall be attached to the outside case.

Colorado

Arizona—Same as Rhode Island

Florida—Same as Rhode Island

Georgia

Idaho—Permits coroner to sign death certificate

Minnesota—Rule reads: 35 A transit permit issued by the proper health authorities shall be required for each dead body transported by common carrier. The transit permit must be in duplicate. It shall state the name, sex, color and age of the deceased, the cause and date of death, the initial and terminal points, the date and route of shipment and the date of issuance. It shall also bear the signature of the undertaker, the signature and official title of the officer issuing the permit and the name of the escort or consignee.

The original transit permit shall be securely fastened on the end of the coffin box or given to the passenger in charge of the corpse. The whole duplicate copy of the transit permit shall be sent to the official in charge of the baggage department of the initial line and by him to the secretary of the State Board of Health.

When bodies are shipped by express the original transit permit shall be attached to and accompany the corpse waybill covering the remains and shall be delivered with the body at the point of destination to the person to whom the corpse is consigned. The whole duplicate copy shall be sent by the forwarding express agent to the secretary of the State Board of Health.

Before selling tickets agents must carefully examine the transit permit and note the name of the passenger in charge and of any others proposing to accompany the body, and see that all necessary precautions have been taken to prevent the spread of the disease. The transit permit shall specifically state who is authorized by the health authorities to accompany the remains. In all cases where bodies are forwarded under

Rule 36, notice must be sent by telegraph by the shipping embalmer to the health officer, or, when there is no health officer, to other competent authority at destination, advising the date and train on which the body may be expected

New Mexico "12 No transportation company shall accept for shipment from a point within the state of New Mexico any dead human body without documentary authority required by the State Board of Public Welfare, which shall include a transit permit and a paster approved by the State Director of Public Health. The transit permit shall contain a physician's or coroner's certificate of death, giving the name and age of the deceased, and cause, date and place of death, and a removal permit, as herein required. The paster shall contain an embalmer's certificate, which shall give the name of the deceased, cause of death, manner of preparation of the body, destination, and name and address of the consignee, together with the transit form to be filled out by the agent of the transportation company. Attached to the paster there shall be a second embalmer's certificate giving the name and age of the deceased, the cause, place and date of death, the place from which the body was shipped, the destination, and the name of the transportation company, certifying that the body was embalmed by the person signing the certificate. Every embalmer who prepares a body for shipment shall secure the physician's or coroner's certificate and the removal permit and fill out the embalmer's certificates, all in duplicate and completely filled out and signed. He shall then detach the original certificate attached to the paster, forward said original certificate immediately to the secretary of the State Board of Embalmers, and deliver the transit permit and paster (with the duplicate of the embalmer's certificate attached) to the agent of the transportation company accepting the body for shipment.

"The agent of any transportation company within the state of New Mexico who receives a dead human body for shipment shall fill out and sign the transit form on the paster in duplicate. He shall then fasten the original paster securely on the top of the shipping case, above the head of the body contained therein, and deliver the original transit permit to the passenger accompanying the body, or if the shipment is made by express, attach said permit to the waybill. He shall then forward the duplicate paster and the transit permit to the secretary of the State Board of Embalmers. Said agent shall also complete the embalmer's certificate attached to the duplicate paster and forward said certificate to the general office of the transportation company.

"Only licensed embalmers permitted to prepare bodies for transportation. Adult-sized cases must have six handles, smaller sizes four."

Oregon

Rhode Island Rule reads: "A transit permit and transit label issued by the proper health authorities shall be required for each dead body transported by common carrier. The transit permit shall state the name, sex, color and age of the deceased, the cause and date of death, the initial and terminal points, the date and route of shipment, a statement as to the method of preparation of the body, the date of issuance, the signature of the undertaker, the signature and the official title of the officer issuing the permit. The transit label shall state the place and date of death, the name of the deceased, the name of the escort or consignee, the initial and terminal points, the date of issuance, the signature and official title of the officer issuing the permit, and shall be attached to the outside case."

Utah

Virginia

Washington—Substantially same as Rhode Island

2 The transportation of bodies dead of smallpox, plague, Asiatic cholera, typhus fever, diphtheria (membranous croup, diphtheritic sore throat), scarlet fever (scarlet rash, scarlatina), shall be permitted only under the following conditions: the body shall be thoroughly embalmed with an approved disinfectant fluid, all orifices shall be closed with absorbent cotton, the body shall be washed with the disinfectant fluid, enveloped in a sheet saturated with the same, and placed at once in the coffin or casket, which shall be immediately closed, and the coffin or casket, or the outside case containing the same, shall be metal or metal lined, and hermetically and permanently sealed.

Arizona

Colorado—Also includes yellow fever, erysipelas, anthrax and leprosy.

Florida—Sheet to be saturated with 1—1,000 solution of corrosive sublimate. Rules provide: "The body after being prepared in the above manner shall be encased in an air-tight zinc, tin, copper or lead lined coffin or casket, all joints and seams hermetically sealed, and all encased in a strong wooden box, or, the body placed in a strong coffin or casket and encased in an air-tight zinc, tin, copper or lead lined outer box.

"Sec 3—The transportation of a body dead from typhoid fever, puerperal fever,

tuberculosis, or measles shall be prepared for transportation as provided in section 2, except requirement for envelopment in sheet or blanket, and encasing in air-tight coffin, etc."

Georgia—Adds yellow fever, erysipelas, anthrax and leprosy

Idaho—Also includes yellow fever, erysipelas, anthrax and leprosy

Minnesota—Rule reads 36 The transportation of bodies dead of smallpox, plague, Asiatic cholera, typhus fever, diphtheria (membranous croup, laryngeal croup) and scarlet fever (scarlet rash, scarlatina), shall be permitted only under the following conditions The body shall be thoroughly embalmed with an approved disinfectant fluid, all orifices shall be closed with absorbent cotton, the body shall be washed with the disinfectant fluid, and placed at once in the coffin or casket, which shall be immediately closed, and the coffin or casket or the outside case containing the same shall be metal, or metal lined and hermetically and permanently sealed

New Mexico—Also includes glanders, anthrax and leprosy Arterial and cavity embalming required Body to be incased in a metallic casket, or in a casket the outside of which is of metal or metal lined, hermetically and permanently sealed; and all incased in a strong, tight wooden case

Oregon

Rhode Island

Utah

Virginia—Also covers erysipelas, anthrax and leprosy

Washington

3 The transportation of bodies dead of any diseases other than those mentioned in rule two, shall be permitted under the following conditions

(A) When the destination can be reached within twenty-four hours after death, the coffin or casket shall be enclosed in a strong outside box made of good sound lumber, not less than seven-eighths of an inch thick, all joints must be tongued and grooved, top and bottom, put on with cleats or cross pieces, all put securely together, and be tightly closed with white lead, asphalt varnish or paraffin paint, and a rubber gasket placed on the upper edge between the lid and the box, provided, however, that caskets containing embalmed bodies may be shipped to points in this state in tight ordinary casket boxes

(B) When the destination cannot be reached within twenty-four hours after death, the body shall be thoroughly embalmed, and the coffin or casket placed in a strong well-made outside shipping case.

Arizona—Omits proviso at end of paragraph A, and the provision for closing with white lead, etc., and for gasket

Colorado—Applies when destination can be reached within 30 hours, within the state Bodies for anatomical purposes may be shipped when prepared as required by state registrar

Florida—Sec 4—The bodies of those dead from any cause not specified in sections 2 and 3 shall be accepted for transportation, when encased in a sound coffin or casket and enclosed in a strong outside wooden box, provided, that the body will reach its destination within 24 hours from the time of death If the body cannot reach its destination within 24 hours the body must be prepared as provided by section 3. Sec. 5—In the shipment of bodies dead from any of the diseases named in section 2, such body shall not be accompanied by persons or articles which have been exposed to the infection of the disease, unless certified by the local or state health officer as having been properly disinfected The transit permit shall specifically state who is authorized to accompany the body

Georgia—Adds that bodies addressed to the state anatomical board may be received when prepared as directed by that board

Idaho—Omits part of paragraph A following the words, "seven-eighths of an inch thick"

Minnesota—Rule reads. 37 The transportation of bodies dead of any disease other than those mentioned in rule 36, shall be permitted under the following conditions.

(a) When the destination can be reached within 24 hours after death, the coffin or casket shall be encased in a strong outer box made of good sound lumber not less than seven-eighths of an inch thick; all joints must be tongued and grooved, top and bottom must be put on with cleats or cross-pieces, all must be securely put together, tightly closed with white lead, asphalt varnish or paraffin paint (b) When the destination cannot be reached within 24 hours after death, the body shall be thoroughly embalmed and the coffin or casket placed in an outside case constructed as provided in paragraph (a).

New Mexico—Bodies dead from any cause not stated in preceding section may be received by a transportation company for shipment within the state of New Mexico only when prepared by being embalmed and disinfected in accordance with the

requirements of the preceding section and inclosed in a coffin or casket incased in a strong, tight wooden or metal case.

Oregon—Omits proviso at end of paragraph A, and requirement for rubber gasket.

Rhode Island—Omits proviso at end of paragraph A.

Utah.

Virginia—Also provides that bodies addressed to anatomical board may be received for shipment when prepared as required by state board of health

Washington—Omits proviso at end of paragraph A, and provision for closing with white lead, etc., and for gasket

4 No disinterred body, dead from any disease or cause, shall be transported by common carriers, unless approved by health authorities having jurisdiction at the place of disinterment, and a transit permit, and transit label, shall be required, as provided in rule 1 The disinterment and transportation of bodies dead of diseases mentioned in rule 2 shall not be allowed except upon permission of the health authorities, at both place of disinterment and the point of destination All disinterred remains for transportation shall be incased in metal casket or metal lined boxes, and hermetically sealed; provided that bodies in a receiving vault when prepared by licensed embalmer, shall not be regarded as disinterred bodies until after the expiration of thirty days

Arizona

Colorado—Rule reads: Rule 4 (a) No disinterred body, dead from any disease or cause, shall be transported by common carrier, unless approved by the health authorities having jurisdiction at the place of disinterment, and the same documentary authority shall be issued as required in rule 1 (b) Disinterred bodies of persons, dead of either smallpox, anthrax, plague, Asiatic cholera, leprosy, diphtheria or scarlet fever, must immediately after disinterment be wrapped in a strong sheet or heavy canvas saturated with a 1 500 solution of corrosive sublimate and then be enclosed in metal lined boxes and be hermetically sealed (c) Other disinterred bodies which have been buried for a period of two years or less must also be enclosed, without antiseptic wrapping, in metal lined boxes and be hermetically sealed Bodies which have been buried for longer than two years and which are not dead of either smallpox, anthrax, plague, Asiatic cholera, leprosy, diphtheria or scarlet fever will demand no special treatment, either in respect to antiseptic wrapping or special box for their enclosure, provided that disinterred bodies, which have about them either a disagreeable odor or such a degree of moisture as to constitute a possible nuisance, shall be subject to all the provisions of (b) this rule (d) Bodies which have been buried for two years or less shall not be disinterred from May 15th to September 15th; bodies in a receiving vault when prepared by a licensed embalmer shall not be regarded as disinterred bodies"

Florida—"Section 6—No dead body shall be disinterred for transportation without the written consent of the state health officer All disinterred remains shall be enclosed in metal or metal-lined boxes and hermetically sealed before being offered for transportation" "Sec 10—Bodies deposited in receiving vaults shall not be treated or considered the same as buried bodies when originally prepared by a licensed embalmer, as defined in sections 2 and 3 (according to the disease causing death): Provided, shipment takes place within 30 days after death"

Georgia

Idaho—Requires approval by state department of public welfare

Minnesota—See also special disinterment regulations in Part II of this book.

New Mexico

Oregon—Requires consent of state board of health

Rhode Island

Utah

Virginia

Washington

5 The outside case may be omitted in all instances when the body is transported in hearse or funeral director's wagon

6 Every outside case shall bear at least four handles, and when over five feet six inches in length, shall bear six handles

7 An approved disinfectant fluid shall contain not less than five per cent of formaldehyde gas The term "embalming" as employed in these rules, shall require the injection by a licensed embalmer, of not less than ten per cent of the body weight for bodies of persons dead of diseases mentioned in rule 2, injected arterially, in addition to cavity injection, and not less than six per cent of the body weight injected arterially in all other cases in addition to cavity injection, and twelve hours shall elapse between the time of embalming and the shipment of the body

Arizona

Colorado

Florida—Omits rule 7 above set forth, and adds following provisions "Sec. 9.—

When dead bodies are to be shipped by express all of the preceding rules shall apply except the transit and removal permit shall be attached to and accompany the way bill" "Sec 11—When a body has been held thirty (30) days from date of death, it shall be prepared in accordance with section 2 and permission of the state health officer must be obtained before the body is offered for transportation"

Georgia—Rule omits embalming time limit

Idaho

Minnesota—Omits rule 7 See special regulation in Part II of this book.

Oregon—Same as Washington

Rhode Island

Utah

Virginia—Ten-hour limit, instead of twelve

Washington—Fluid approved by board of embalmers' examiners may be used. Rule adds "A five per cent solution of carbolic acid, a 1:500 solution of corrosive sublimate or 14 per cent of a 40 per cent solution of formaldehyde are approved as disinfectants for external washing of bodies when required by these rules Other prepared disinfectants of equal germicidal action may also be used"

8 Any corpse shipped originally from any primary registration district within the state, accompanied by a properly executed transit permit, to any other primary registration district within the state, may be trans-shipped by surrendering the original transit permit to the local registrar and receiving in exchange a new transit permit, unless said body has been held over 30 days or has been interred, in which case proceed under rule 4

If corpse is routed to point of final destination on original transit permit and is accompanied by ticket which allows stop-over privileges, corpse may be held for funeral or for any other purpose temporarily, at a stop-over point without any additional transit permit being required

Oregon

Washington

9 The transit permit shall be accepted as authority for interment or cremation anywhere within the state by sextons or crematory officials, and shall be surrendered to them by the person in charge of corpse at point of interment, in the same manner as a "burial-removal" permit

Washington

10 Transportation of any body by common carrier in the state is prohibited unless the body has been prepared for transportation by a licensed embalmer holding a license as such, issued by the board of embalmers' examiners

Colorado—Excepts from requirement for preparation of body by licensed embalmer cases where body can reach destination within state and within 30 hours

New Mexico

Oregon

Washington

IV

1. The transportation of bodies dead of smallpox, bubonic plague, Asiatic cholera, yellow fever, typhus fever, diphtheria (membranous croup), scarlet fever (scarlatina, scarlet rash), erysipelas, glanders, anthrax or leprosy, shall not be accepted for transportation unless prepared for shipment by being thoroughly disinfected by (a) arterial and cavity injection with an approved disinfecting fluid containing not less than fourteen per cent (14%) of 40% formaldehyde solution, and that the amount of fluid injected must not be less than one-thirteenth ($1/13$) of the body weight; (b) disinfection and stopping all orifices with absorbent cotton, and (c) washing the body with the disinfectant After being disinfected as above, such body shall be completely wrapped in a sheet securely fastened, and encased in an airtight zinc, tin, copper or lead-lined coffin or casket, all joints hermetically sealed, or in a coffin or casket enclosed in a tin or zinc-lined box, all joints and seams hermetically sealed

California

Kansas Rule same as in Wyoming, excepting that Rocky Mountain fever and pellagra are not specified Rule specifies as transportation agencies. Railway, express and electric railway companies, coaches, and public or private conveyances These further provisions are made If body is in airtight, sealed casket, shipping or rough box may be dispensed with, if body is conveyed in hearse or other conveyance used exclusively for conveying the dead Embalming not necessary under this rule if body is to be buried within 24 hours after death, and if burial is to be made in nearby cemetery under quarantine regulations Bodies coming under this rule to be moved from hospital or place of death to morgue must be wrapped in a sheet saturated in bichloride of mercury, 1 to 1,000 solution, and then put in a metal transfer case, or wrapped in rubber sheeting

and placed in basket or container and moved only in conveyance used exclusively for conveying the dead. Conveyance and paraphernalia to be disinfected after each body is removed.

2 The bodies of those who have died of measles, erysipelas, diphtheria, (or any diphtheritic disease, including heart failure, croup, membranous croup, angina maligna, putrid sore throat, malignant sore throat), scarlet fever, (sometimes called scarlatina, scarlet rash, scarlatinal nephritis, canker rash, rash), Rocky Mountain spotted fever, glanders, anthrax, smallpox (variola, varioloid), chicken-pox (varicella), Asiatic cholera, yellow fever, typhus fever, bubonic plague, spinal meningitis, pellagra, anterior poliomyelitis (infantile paralysis), or leprosy, shall not be transported nor accepted for transportation unless prepared by being thoroughly disinfected by (a) arterial and cavity injection with an approved disinfecting fluid containing not less than fourteen (14) per cent of 40 per cent formaldehyde solution and that the amount of fluid injected arterially, in addition to gravity injection, must not be less than one-thirteenth (1/13) of the body weight, (b) disinfecting and stopping all orifices with dry absorbent cotton, (c) washing the body with a disinfectant, i. e., a solution of bichloride of mercury 1 to 1000 (7½ grains of the bichloride of mercury to one pint of water), and enveloping body in sheet saturated with same solution. After being prepared and disinfected as above, such body shall be enclosed in an air-tight metallic zinc, tin, copper, or lead-lined coffin or casket, all joints and seams hermetically sealed or soldered, and all encased in a strong, outside wooden or metal box. Or, the body being prepared and disinfected as above, may be enclosed in a coffin or casket, and the coffin or casket encased in an air-tight, metallic, zinc, tin or copper-lined wooden shipping box, or all metal shipping case, all joints and seams hermetically sealed or soldered.

The embalmer must adhere strictly to modern, sanitary methods in regard to disinfection, in preparing dead human bodies for shipment under this rule.

Wyoming

2 The bodies of those dead from any cause not stated in Rule 1 may be received for transportation when encased in a sound coffin or casket and enclosed in a strong outside wooden box. The body must be prepared for shipment by arterial and cavity injection with an approved disinfecting fluid containing not less than 5% of 40% formaldehyde solution, the amount of fluid injected not to be less than one-thirteenth (1/13) of the body weight, stopping all orifices with absorbent cotton and washing the exterior of the body with the disinfection fluid.

California

3 Bodies dead from any cause not stated in Rule 2, shall not be transported, offered or accepted for transportation (except to local or adjacent cemeteries, or except if carried by private conveyance, not over thirty miles, to a cemetery, or to a place of preparation for burial, or to a place of conducting funeral services) by any person, agent or owner of any Railway Company, Express Company, Electric Railway, Coaches, Public or Private Conveyances, unless prepared by being thoroughly disinfected by (a)—arterial and cavity injection with an approved disinfecting fluid containing not less than ten (10) per cent of forty (40) per cent formaldehyde solution, (b)—disinfecting and stopping all orifices with dry cotton, (c)—washing body with disinfectant. After being prepared and disinfected as above, such bodies shall be enclosed in a coffin or casket, encased in a strong outside wooden or metal shipping case. The shipping box or outer case may be dispensed with, if body is conveyed in hearse or other conveyance used exclusively for moving the dead.

Kansas

3 Bodies dead from any cause not stated in Rule 2 may be received for transportation when prepared by being thoroughly disinfected by (a) arterial and cavity injections, with an approved disinfecting fluid containing not less than 10 per cent of 40 per cent formaldehyde solution, (b) disinfecting, and stopping of all orifices with dry absorbent cotton, and (c) washing the body with a disinfectant. After being prepared and disinfected as above, such bodies shall be enclosed in a coffin or casket, encased in a strong, outside wooden box or metal shipping case.

Wyoming

No body shall be received for transportation unless having been prepared by a licensed embalmer holding a valid license in the state.

California

4 In the shipment of bodies dead from any contagious disease named in Rule 1, the body must not be accompanied by persons or articles which have been exposed to the infection of the disease, unless certified by the health officer as having been properly disinfected, and before selling passage tickets, agents shall carefully examine the transit permit and note the name of the person in charge, and any other persons accompanying the body, and see that all necessary precautions have been taken to prevent the spread

of the disease. The transit permit in such cases shall specifically state who is authorized by the health authorities to accompany the remains. In all cases where bodies are forwarded under Rule 1 (contagious diseases), notice must be sent by telegraph to the health officer at destination, advising the date and train on which the body may be expected.

California

4 Bodies dead from any cause not stated in Rule 2 may be received for transportation when Rule 2 as to hermetical-sealing is observed, provided they can reach their destination within thirty (30) hours from the time of death. If the body cannot reach its destination within thirty (30) hours from the time of death, it must be prepared for shipment by a Wyoming licensed embalmer in the manner directed in Rule 3.

Wyoming

5 Bodies dead from any cause not stated in Rule 1, such as bodies badly mangled or burned, that can not be prepared under Rule 2, may be accepted for transportation by being thoroughly disinfected with an approved disinfecting compound or preservative and by using air-tight sealing as required in Rule 1.

California

Kansas

Wyoming

4 Bodies dead from any cause not stated in Rule 2, such as bodies badly mangled or burned that cannot be prepared under Rule 3, shall not be transported, offered or accepted for transportation (except to local or adjacent cemeteries, or except if carried by private conveyance, not over thirty miles, to a cemetery, or to a place of preparation for burial, or to a place of conducting funeral services) by any person, agent or owner of any railway company, express company, electric railway, coaches, public or private conveyance unless prepared by being thoroughly disinfected by an approved disinfecting compound or preservative, and by using air-tight sealing as required in Rule 2. The shipping box or outer case may be dispensed with if body is conveyed in hearse or other conveyance used exclusively for moving the dead.

Kansas

6 The bodies of those dead from any cause except puerperal fever and those stated in Rule 2 to be used for demonstration of anatomy, in colleges and schools of embalming, or for the use of the State Board of Embalming, may be received for transportation when prepared by being thoroughly disinfected by arterial injection with an approved disinfecting fluid. After being prepared as above, such bodies shall be enclosed in a coffin or casket, encased in a strong wooden box, or in a zinc, tin, copper or metal-lined box, or metallic shipping case.

Wyoming

Kansas Rule specifies public and private conveyances, as well as railway, electric railway, and express transportation.

6 Every disinterred body, dead from any cause, shall be treated as infectious or dangerous to the public health, and must not be accepted for transportation unless said removal has been approved by the state or local authorities having jurisdiction where such body is to be disinterred, and the consent of the health authorities of the locality to which the corpse is consigned has first been obtained, and such disinterred body must be enclosed in a hermetically sealed zinc, tin or copper-lined casket or box.

California

Kansas Substantially same as Wyoming, except applies to all conveyances, etc., as well as railroads, etc. Omits requirement for blanket and last sentence in Wyoming rule.

Before bodies can be disinterred, a disinterment permit must be obtained from the Secretary of the State Board of Health. The disinterment permit must be tacked (Do not paste on or put in envelope) on top of the shipping box, same as the Yellow Paster, and must accompany body to destination. Local registrars will issue to Wyoming licensed embalmers only, removal permits for disinterred bodies upon presentation of a disinterment permit properly signed by the Secretary of the State Board of Health.

No disinterred body dead from any disease or cause named in Rule 2, shall be accepted for transportation until after dead at least two years. All disinterred bodies shall be treated as infectious or dangerous to public health and shall not be accepted for transportation unless said removal has been approved by the authorities having jurisdiction where such body is disinterred, and the consent of the authorities of the locality to where the body is consigned, has first been obtained, and all such disinterred remains shall be enveloped in a blanket saturated with a solution of bichloride of mercury 1:1000, and enclosed in an air-tight, metallic, zinc, tin, copper or lead-lined coffin or casket, all joints and seams hermetically sealed or soldered and encased in a strong, outside wooden or metal box. Or, casket enveloped in a blanket saturated as above, encased in an air-

tight metallic, zinc, tin, copper or metal-lined box or metal shipping case, all joints or seams hermetically sealed or soldered

Bodies may be placed in receiving vaults awaiting shipment if prepared according to Rules 2 and 3, provided shipment is made within thirty (30) days from the time of death. After 30 days, rules governing disinterred bodies shall be enforced

Wyoming

7 Under no circumstances shall a corpse be received for transportation if fluids or offensive odors are escaping from the case. Transportation agents will at once notify the local health officer or the secretary of the State Board of Embalmers if such bodies are delivered for shipment. The registrar of the local board of health shall make a record of such notice and immediately forward same to the Secretary of the State Board of Embalmers

California

7 Bodies that have been embalmed and transported and are in good condition shall not be received for reshipment or transportation by any person, agent or owner of any railway company, express company, electric railway, coaches, public or private conveyance, unless re-shipped by Kansas licensed embalmer, using Yellow Paster, filling out licensed embalmer's certificates Nos. 1 and 2, and copying original physician's, coroner's, health officer's certificates or registrar's removal permit. Bodies not in good condition shall not be re-shipped or transported until said body has been prepared according to the rules governing the preparation and transportation of dead human bodies in the State of Kansas. Shipping box or outer case may be dispensed with, if body is conveyed in hearse or other conveyance used exclusively for moving the dead.

Kansas

Wyoming Substantially same, excepting transportation conveyances not specified and last sentence is omitted

8 All dead human bodies coming into the State of Kansas via any railway company, express company, electric railway, coaches, public or private conveyance, shall be accompanied by physician's, coroner's, health officer's certificate or registrar's removal permit, stating cause of death, etc., also by a certificate of a licensed embalmer stating that the body has been embalmed according to the transportation rules of the state from where said body was shipped. Provided, where shipment is made from any state or province having no board or statutes regulating the practice of embalming and the transportation of dead human bodies, such body must be accompanied by documentary evidence that such body has been prepared in accordance with the rules herewith promulgated. Any person, agent or owner of any railway company, express company, electric railway, coaches, public or private conveyance having in charge and transit any dead human body that has not been properly prepared or embalmed and has become offensive or dangerous to public health, shall refuse to continue transportation until said body has been properly prepared, embalmed, so that public health is not endangered.

Kansas

Wyoming Rule omits last two sentences

Yellow pasters used for transportation of bodies must contain statement of death, undertaker's certificate, and railway or express transit paster. Said paster to be furnished by the state board of embalmers of the State of California and issued only to embalmers holding a valid license from said board. The undertaker having charge of a body to be prepared for shipment must see that all certificates and permits have been properly secured and filled out. The local registrar's statement of death and permit for removal shall be placed in a stout envelope or other covering and securely tacked on the box. The agent of any railway or common carrier receiving a body for transportation must fill out railway or express transit paster, signing his name for same. The transit paster together with undertaker's certificate shall be securely pasted or fastened on the box and the duplicate paster retained by the transportation company.

When bodies are taken from train to train in the same station, or from one railroad station or boat to another in any registration district the removal permit accompanying the body from the place of shipment shall be sufficient authority for continuance to the place of destination.

All outside boxes must be fitted with at least six handles, two on each side and one on each end.

Bodies which have been embalmed for transportation, may be reshipped by a licensed embalmer by using yellow paster and including the number of the embalmer who prepared the body.

Bodies to be placed in a vault or mausoleum for the purpose of repository for the dead for longer than 30 days, shall be thoroughly embalmed as under Rule 1, transportation rules, and encased in an air-tight zinc, tin, copper or lead-lined coffin or casket.

all joints hermetically sealed, or in a coffin or casket enclosed in a tin or zinc-lined box, all joints hermetically sealed

Any wilful violation of the official rules concerning the transportation or embalming of the dead will be deemed sufficient cause for the state board of embalmers to cancel a license.

Any licensed embalmer who signs a certificate attesting to the preparation of a body not prepared by himself, shall be considered guilty of a wilful violation of the rules of this board.

California

1 Yellow pasters used for the transportation of dead human bodies, must contain removal permit, embalmer's certificates Nos 1 and 2, and transit form. Paster must be approved by State Board of Health. Pastors to be furnished by the State Board of Embalming, and issued only to licensed embalmers.

The embalmer who prepares a body for transportation (*except to local or adjacent cemeteries*), must fill out embalmer's certificates Nos 1 and 2, also secure removal permit, all properly filled out and signed. Embalmer shall detach original embalmer's certificate No 2 and immediately forward to Secretary of State Board of Embalming.

The person, agent or owner of any railway company, express company, electric railway, coaches, public or private conveyance, who receives a dead human body for transportation, must fill out transit form and sign as person, agent or owner, and securely fasten original paster containing removal permit, embalmer's certificate No 1 and transit form on the shipping box or case (so that the same may be read); yellow paster must accompany body to destination.

No person, agent or owner of any railway company, express company, electric railway, coaches, public or private conveyances, shall transport, receive or offer for transportation any dead human body (except disinterred body) and as provided in Rules 3 and 4 unless body has been embalmed 12 hours and is accompanied by a yellow paster, properly filled out and signed by a Kansas licensed embalmer in accordance with this rule.

The sale of embalming fluids, hardening compounds and preservatives containing mineral poisons, to be used for the preparation of dead human bodies, is strictly forbidden in the State of Kansas, also the use, in the preparation of dead human bodies of any such embalming fluid, hardening compound or preservative, containing mineral poison, is strictly forbidden in this state, and labels on container shall read "No Mineral Poison."

Kansas

Wyoming Rule substantially same as Kansas rule but merely forbids "use" of mineral poisons, fluids, etc., without forbidding sale. Rule also provides All embalming fluids used for embalming, in the State of Wyoming, shall have the per cent of formaldehyde gas as contained in the original package, and also the per cent of formaldehyde gas as used according to directions, plainly and correctly stated on the label. All shipping boxes or cases must have at least six handles.

SECTION 12 RULES FOR SHIPPING CORPSES ON TICKET

Adopted by General Baggage Agents of all the Different Passenger Traffic Associations of the United States and Canada

Rule 21 (a) A corpse will be checked under an "Excess Baggage Check," endorsed "Corpse," and showing form and number of ticket, and transported in baggage service, provided a first-class adult ticket, limited or unlimited, is presented, and that portion thereof reading to destination of check surrendered to the checking baggage agent, who will transmit same, with his report, to the accounting department of his company, also provided the corpse be accompanied on the same train by an escort. Minimum fare for a one-way ticket for any corpse is \$1.00.

(b) A corpse will be accepted for transportation only on presentation of legal form of transit permit, properly filled out and signed, showing that the body has been prepared for shipment in accordance with the law.

(c) A corpse will be checked only upon presentation of a regular one-way first-class adult ticket, or the return portion of a first-class adult round-trip ticket.

Exceptions—The return portion of a half-fare ticket originally issued for transportation of a child, when presented, together with one additional half-fare ticket, will be honored for checking the corpse of a child.

The contract and each coupon of a ticket presented for the transportation of a corpse must bear the word "Corpse," written or stamped with ink.

(d) A corpse will not be checked beyond a station at which a wagon transfer is

required, except where special authority is given. The escort of the corpse will be required to make all arrangements for such transfer.

(e) When a corpse is checked to a non-agency station the carriers assume no responsibility for the care of the corpse at such destination.

(f) Each corpse box shall bear at least four handles, and when over five feet six inches in length, six handles, and must be plainly marked, showing name of deceased, destination, route, and to whom consigned.

(g) Escort will be required to present a separate ticket for his own transportation, contract and each coupon of the ticket to be marked "Corpse Escort. Excess Check form . . . No . . ."

(h) Baggage of the deceased may be checked upon presentation of the corpse ticket, in accordance with the rules and regulations herein contained governing the transportation of baggage of a passenger.

(i) A corpse will not be accepted or transported if it be offensive, or if fluids are escaping from the case, notwithstanding the presentation of permits or certificates.

(j) When a casket and dead body presented for shipment in baggage service weighs more than 500 pounds, the excess weight will be charged for at current excess baggage rates.

SECTION 13. RULES OF THE AMERICAN RAILWAY EXPRESS COMPANY

19—Corpses. When weight does not exceed 500 lbs., corpses must be charged double the regular limited one-way first-class passenger fare, as named in the tariff or tariffs of the railroad or other passenger carrier or carriers over whose lines the corpse is transported, as lawfully on file with the Interstate Commerce Commission, the Canadian Railway Commission and the Public Service Commissions, First and Second Districts, State of New York, and the Railway Commissions with which the Classification is filed; but never less than \$3.30 for any distance, except that the corpse of a child under 12 years of age may be carried at single adult passenger fare, as provided above, but never less than \$2.20, when the weight exceeds 500 lbs., charge should be made, in addition to the above, for excess weight at first-class express rate. Above rates include, without additional charge, the transportation of personal effects not to exceed 150 lbs., when forwarded on the same receipt. Any excess weight must be charged first class.

Corpses must not be sent C O D, nor with charges to collect, unless the money to pay the C O D bill, and charges for transportation, is deposited with express agent at destination before shipment, and in such cases destination agent shall telegraph agent at shipping point as to the amount of money placed in his hands to cover the charges, or to cover the C O D bill or both as the case may be. The cost of telegrams must be paid by the person in whose interest they are sent, and routing be such as to reach destination over the line of the company whose agent has the money on deposit.

In the absence of routing instructions from the shipper, corpses, burial cases and funeral supplies, including flowers, must always be forwarded via the route making the quickest time to destination, taking into account combination routes with other companies.

CHAPTER IV

DEATH STATISTICS

SECTION 14 PURPOSE FOR PRESERVING STATISTICS

The Illinois Bureau of Vital Statistics gives these reasons for maintaining death records

1 To prove *legal marriage* it may be necessary to produce a *certificate* of the death of former husband or wife

2 Clear title to property may depend on a certificate of the prior death of some possible unknown claimant to the property

3 Title in *inheritance* depends on evidence of death of former owner

4 A certified copy of *death* certificate is necessary in securing payment of *life insurance*

5 Widows and orphans of deceased soldiers must have a certified copy of *death* of the soldier, husband or father in order to receive *pension*

6 Properly completed certificates of death are essential in a scientific study of causes of mortality and as a basis for protecting life and health

7 The individual citizen of the state, no matter how humble his position in life, or how insignificant his influence in the affairs of the community is entitled to have an accurate record made of the important and vital events of his life. Since our state has *undertaken* to do this, the citizen has a right to expect that the state will perform its duty with precision and thoroughness

A bulletin of the Wisconsin Department of Health says, concerning the registration of deaths

"Human life is sacred. When a human being passes out from our life it is important that an immediate record be made of all the essential details of the event. An immediate record, because it is well established by years of experience that an accurate record in all cases cannot or will not be made unless the law requires it to be made at once. Such a record should include the facts relating to the exact time and place of death, the full name, age, sex, color, civil condition, occupation, place of birth, and other details relating to the individual, and also, a very important requirement, a statement by the attending physician, or by the health officer or coroner, of the cause of death. These facts may be of the greatest legal and social importance.

"(1) Certificates of death, or certified copies are constantly required in courts and elsewhere to establish necessary facts.

"(2) Pensions or life insurance may depend on proper evidence of the fact and of cause of death.

"(3) Titles and rights to inheritance may be jeopardized by the failure of records;

"(4) Deaths should be registered, that public health agencies—national, state and municipal—may know the causes of death and act promptly to prevent epidemics.

"(5) Deaths should be registered promptly that the success or failure of all measures attempted in the prevention of disease may be accurately determined.

"(6) Deaths should be registered that individual cities and localities may learn their own health conditions by comparison with the health conditions of other communities and determine thereby the wise course of public health activity.

"(7) Deaths should be registered, that homeseekers and immigrants may be guided in the selection of safe and healthful homes."

SECTION 15 VALIDITY OF STATUTES

Defendants, funeral directors, were proceeded against under a charge of having handled a body without procuring a removal certificate, and, the circuit court held that the Tennessee law under which it was required was unconstitutional. The indictment was thereupon quashed, but on appeal to the Tennessee Supreme Court it was

adjudged that the law was valid, and the rulings of the lower court were reversed. (*State v. Norvell*, 191 Southwestern Reporter, 536.) The following is an abstract of the law in question

"That the body of any person . . . shall not be interred, deposited in a vault or tomb, cremated or otherwise disposed of, or removed from or into any registration district, or be temporarily held pending further disposition more than seventy-two hours after death, until a permit for burial, removal, or other disposition thereof shall have been properly issued by the registrar of the district in which the death occurred," etc.

"Permits are to issue only upon filing of certificate of death in the form approved by the United States census bureau, showing certain matters which the law particularly specifies

"The statement of facts relating to the disposition of the body shall be signed by the undertaker or person acting as such"

"In case of any death occurring without medical attendance, it shall be the duty of the undertaker to notify the local registrar of such death, and when so notified, the registrar shall inform the local health officer and refer the case to him for immediate investigation and certification prior to issuing the permit," etc

"The undertaker, or other person acting as undertaker, shall be responsible for obtaining and filing the certificate of death, . . . and for securing a burial or removal permit prior to any disposition of the body . . . He shall obtain the personal statistical particulars required from the person best qualified to supply them . . . He shall then present the certificate to the attending physician, if any, or to the health officer or coroner, as directed by the local registrar, for the medical certificate of the cause of death and other particulars necessary to complete the records . . . And he shall then state the facts required relative to the date and place of burial over his signature and with his address and present the completed certificate to the local registrar, in order to obtain a permit for burial, removal, or other disposition of the body"

Other requirements of the law are indicated in the language of the opinion of the Supreme Court quoted below

Defendants attacked the constitutionality of the law on the ground that it placed unreasonable burdens on undertakers, but the higher court, after referring to the advantages of recorded vital statistics, said

"Properly construed, this statute is not unreasonable nor arbitrary in its provision, and it imposes no undue burden on the undertakers

"The prohibition against holding a dead body for more than seventy-two hours is humane as well as sanitary

"In the great majority of cases it will be an easy matter for the undertaker to procure from the family or friends of the deceased the information required

"When the death certificate is properly made out and filed with the local registrar, the latter is required to issue a permit for burial, which the undertaker turns over to the sexton in charge of the cemetery where the interment takes place . . . If no sexton is in charge of the burying ground, the undertaker indorses a statement of that fact on the permit and is himself required to return said permit to the registrar

"The statute was not intended to require an impossibility of any one . . . Cases will arise in which the undertaker cannot procure the information prescribed for inclusion in the death certificate—as when he is called upon to bury strangers and others concerning whom statutory details are not available . . . If, after diligent effort, the undertaker is unable to obtain such information, upon a proper showing to this effect, the local registrar will issue a burial permit notwithstanding . . . It is conceivable, of course, that the attending physician or local registrar or others may prove obstreperous or unmindful of the obligations imposed by the statute, and thus interfere with an orderly burial . . . In such an event the undertaker may safely proceed with the disposition of the body . . . If he is diligent himself to comply with the law, the court will not punish him for the default of others

"These exceptional cases will, no doubt, be covered by the rules which the board of health is expressly authorized to promulgate

"The duties placed upon the undertaker by the statute will put him to some trouble. Organized society is entitled to demand such services of any citizen, however, for the health and safety of all . . . The undertaker is in a position to render this service to the state in most cases without special effort . . . His charges are ordinarily sufficient to cover this additional labor imposed by the statute, if he were entitled to compensation for it"

The court then refers to the fact that similar statutes have been upheld by the highest courts of Iowa and Kentucky, and that a contrary conclusion reached by the Ohio Supreme Court was based upon a peculiar provision of the organic law of Ohio

which forbids the taking of private services or property without compensation, even though "the public exigencies make it necessary."

SECTION 16 VALIDITY OF ORDINANCE

In *Yeadon v White*, 36 Pennsylvania Superior Court Reports, 360, it was decided that a borough ordinance requiring permits to be taken out for the burial of the dead was not invalidated by an act of the legislature adopted in 1905, providing for the issuance of burial permits. The court said

"The statute and ordinance are parts of a system of vital importance to the health and safety of both city and borough. The supervisory care of collating statistics and insuring safety to the public by proper registration of the cause of death and transfer of bodies by common carrier and ordinary conveyances, from point to point, are fully provided for by the act of 1905, and after a careful examination of the statute we feel that while the state has power to annul the ordinance, it has not clearly declared such an intention, and that the requirement to procure the burial granted by the board of health of Philadelphia [where death occurred], as well as the permit of the board of health of Yeadon, in Delaware county [where burial occurred], for the burial of the body in that borough, is not unreasonable, and that both the ordinance and statute may stand"

SECTION 17 NATURE OF STATUTORY PROVISIONS

There is an increasing tendency to reduce to uniformity the statutes of the several states, providing for the registration of death and other vital statistics

These acts vest in the State Board of Health, or some similar body, charge of the registration and the duty to enforce the statutory requirements. And there are varying provisions for the appointment of local registrars and subregistrars.

The following paragraphs, which are specially numbered for convenience in referring from the digest of laws and regulations of the several states in Part II of this book, constitute the common type of statutory provisions, so far as specially affecting funeral directors and embalmers. Material variations when occurring in the laws of the respective states are noted in that digest

1 PERMITS FOR BURIAL, REMOVAL AND TRANSPORTATION OF DEAD BODIES The body of any person whose death occurs in the state shall not be interred, deposited in a vault or tomb, cremated or otherwise disposed of, or removed from or into any registration district or be temporarily held pending further disposition more than seventy-two hours after death, until a permit for burial, removal or other disposition thereof shall have been properly issued by the local registrar of the registration district in which the death occurred. And no such burial or removal permit shall be issued by any registrar until a complete and satisfactory certificate of death has been filed with him as hereinafter provided. *Provided*, That when a dead body is transported by common carrier into a registration district in [the state] for burial, then the transit removal permit, issued in accordance with the law and health regulations of the place where the death occurred, when said death occurs outside the state of —, shall be accepted by the local registrar of the district into which the body has been transported for burial or other disposition, as a basis upon which he shall issue a local burial permit, in the same way as if the death occurred in his district, but shall plainly enter upon the face of the burial permit the fact that it was a body shipped in for interment, and give the actual place of death, and a burial permit shall not be required from the local registrar of the district in which interment is made, when a body is removed from one district to another in the state for purpose of burial or other disposition, either by common carrier, hearse, or other conveyance, and no local registrar shall, as such, require from undertakers or persons acting as undertakers any fee for the privilege of burying dead bodies

2 STILLBORN CHILDREN Stillborn children, or those dead at birth, shall be registered as births and also as deaths, and a certificate of both the birth and death shall be filed with the local registrar in the usual form and manner, the certificate of birth to contain, in place of the name of the child, the word "stillbirth." The medical certificate of the cause of death shall be signed by the attending physician, if any, and shall state the cause of death as stillborn, with the cause of the stillbirth, if known, whether a premature birth, and, if born prematurely, the period of uterine gestation, in months, if known; and a burial or removal permit in the usual form shall be required. Midwives shall not sign certificates of death for stillborn children; and such cases, and stillbirths occurring without attendance of either physician or midwife, shall be treated as deaths without medical attendance, as provided for in Section 4.

3 CERTIFICATES OF DEATH. [Requires certificate to be in the standard

form approved by the United States Census Bureau, setting forth matters to be stated, or referring to the form. This form appears elsewhere in the next section.]

The statement of facts relating to the disposition of the body shall be signed by the undertaker or person acting as such.

The medical certificate shall be made and signed by the physician, if any, last in attendance on the deceased, who shall specify the time in attendance, the time he last saw the deceased alive and the hour of the day at which death occurred. And he shall further state the cause of death, so as to show the course of disease or sequence of causes resulting in death, giving the primary cause, and also the contributory causes, if any, and the duration of each. Indefinite and unsatisfactory terms, indicating only symptoms of disease or conditions resulting from disease, will not be held sufficient for issuing a burial or removal permit, and any certificate containing only such terms as defined by the state registrar as indefinite and unsatisfactory, shall be returned to the physician for correction and definition. The international classification of the causes of death shall be used by all physicians in stating the cause of death in the medical certificate, causes of death, which may be the result of either disease or violence, shall be carefully defined, and if from violence, its nature shall be stated, and whether (probably) accidental, suicidal, or homicidal. And in case of deaths in hospitals, institutions, or away from home, the physician shall furnish the information required under this head, and shall state where, in his opinion, the disease was contracted.

4. IN CASES WITHOUT MEDICAL ATTENDANCE In case of any death occurring without medical attendance it shall be the duty of the undertaker or person acting as such, to notify the local registrar of such death and if the local registrar is a qualified physician he shall, at once, investigate the circumstances of the case and from the results of such investigation make a certificate and return of death, noting this fact upon the certificate. *Provided*, That, when the local health officer is not a qualified physician, or when there is no such official, and in such cases only, the registrar is authorized to make the certificate and return from the statement of relatives or others persons having adequate knowledge of the facts. *Provided further*, That if the death was caused by unlawful or suspicious means, the registrar shall then refer the case to the coroner for his investigation and certification, and any coroner, whose duty it is to hold an inquest on the body of any deceased person, and to make the certificate of death required for a burial permit, shall state in his certificate the name of the disease causing death, or the means of death, causes of violence, and whether (probably) accidental, suicidal, or homicidal, as determined by the inquest; and shall, in either case, furnish such information as may be required properly to classify the death.

5 DUTIES OF UNDERTAKER The undertaker, or person acting as undertaker, shall be responsible for obtaining and filing the certificate of death with the local registrar of the district in which the death occurred, and securing a burial or removal permit, prior to any disposition of the body. He shall obtain the personal and statistical particulars required from the person best qualified to supply them, over the signature and address of his informant. He shall then present the certificate to the attending physician, if any, or to the health officer or coroner, as directed by the local registrar, for the medical certificates of the cause of death and other particulars necessary to complete the record, as specified in Section 4, and he shall then state the facts required relative to the date and place of burial, over his signature and with his address, and present the completed certificate to the local registrar, who will issue a permit for burial, removal or other disposition of the body. The undertaker shall deliver the burial permit to the sexton, or person in charge of the place of burial, before interring or otherwise disposing of the body, or shall attach the transit permit containing the registration removal permit to the box containing the corpse, when shipped by any transportation company, said permit to accompany the corpse to its destination, where, if within the state, it shall be delivered to the sexton or other person in charge of the place of burial.

No railroad company, steamship company, or other transportation company, shall accept a corpse of a human being at any point in the state of —, for shipment to any point within or outside the state of —, without said corpse being accompanied by a registration removal permit.

6 CASKET SALES REGULATIONS Every person, firm or corporation selling a casket shall keep a record showing the name of the purchaser, purchaser's post-office address, name of deceased, date and place of death of deceased, which record shall be open to inspection of the state registrar at all times. On the first day of each month the person, firm or corporation selling caskets shall report to the state registrar each sale for the preceding month, on a blank provided for that purpose, pro-

vided, however, no person, firm or corporation selling caskets to dealers or undertakers only shall be required to keep such record, nor shall such reports be required from undertakers when they have direct charge of the disposition of a dead body.

Every person, firm or corporation selling a casket at retail, and not having charge of the disposition of the body shall inclose within the casket a notice furnished by the state registrar, calling attention to the requirements of the law, and a blank certificate of death, and the rules and regulations of the state board of health concerning the burial or other disposition of a dead body

7 INTERMENT WITHIN STATE If the interment or other disposition of the body is to be made within the state, the wording of the burial permit may be limited to a statement by the registrar, and over his signature, that a satisfactory certificate of death having been filed with him, as required by law, permission is granted to inter, remove, or otherwise dispose of the deceased, stating the name, age, sex, cause of death, and other necessary details upon the form prescribed by the state registrar

8 No person in charge of any premises on which interments or cremations are made shall inter or permit the interment or other disposition of any body unless it is accompanied by a burial, cremation or transit permit, as herein provided. Such person shall endorse upon the permit, the date of interment, or cremation over his signature, and shall return all permits so endorsed to the registrar of his district within seven days from the date of interment or cremation. He shall keep a record of all bodies interred or otherwise disposed of on the premises under his charge, in each case stating the name of each deceased person, place of death, date of burial or disposal, and name and address of the undertaker, which record shall at all times be open to official inspection, provided that the undertaker or person having charge of the corpse, when burying a body in a cemetery or burial ground having no person in charge, shall sign the burial or removal permit, giving the date of burial, and shall write across the face of the permit the words "No person in charge," and file the burial or removal permits within three days with the registrar of the district in which the cemetery is located.

9 REGISTRATION OF UNDERTAKERS, ETC. Every physician, . . . undertaker, and retail casket dealer, shall without delay, register his or her name, address and occupation with the local registrar . . . and shall thereupon be supplied by the local registrar with a copy of this act, together with such rules and regulations as may be prepared by the state registrar relative to its enforcement. Within thirty days after the close of the calendar year, each local registrar shall make a return to the state registrar of all physicians, . . . undertakers or retail casket dealers who have been registered in his district during the whole or any part of the preceding calendar year, provided, that no fee or other compensation shall be charged by local registrars . . . for registering . . . under this section.

10 Penalties provided for violation of the several laws vary in different states, and the text of these laws should be consulted for information as to the specific penalties that may be imposed for violations

STANDARD CERTIFICATE OF DEATH

DEPARTMENT OF COMMERCE
BUREAU OF THE CENSUS

1 PLACE OF DEATH County _____ Township _____ City _____		State _____ or Village _____		Registered No. _____ St. _____ Ward _____	
2 FULL NAME (a) Residence No. _____ (Usual place of abode) Length of residence in city or town where death occurred yrs mos da		(If death occurred in a hospital or institution, give its NAME instead of street and number) St. _____ Ward _____ (If nonresident give city or town and state.) How long in U. S., if of foreign birth? yrs mos da			
PERSONAL AND STATISTICAL PARTICULARS			MEDICAL CERTIFICATE OF DEATH		
3 SEX _____	4 COLOR OR RACE _____	5 Single _____ Married _____ Widowed _____ or Divorced (write the word.)	16 DATE OF DEATH (month day and year) _____ 19__		
5a If married, widowed or divorced HUSBAND of _____ (or) WIFE of _____			17 I HEREBY CERTIFY, That I attended deceased from _____ 19__ to _____ 19__ that I last saw him alive on _____ 19__ and that death occurred on the date stated above, at _____ m		
6 DATE OF BIRTH (month day and year) _____			The CAUSE OF DEATH* was as follows _____		
7 AGE _____	Years _____	Month _____ Days _____	If LESS than 1 day _____ hrs _____ min _____		
8 OCCUPATION OF DECEASED (a) Trade, profession or particular kind of work (b) General nature of industry, business or establishment in which employed (or employer) (c) Name of employer			CONTRIBUTORY (duration) yrs mos da (duration) yrs mos da		
9 BIRTHPLACE (city or town) (State or country) _____			18 Where was disease contracted if not at place of death? _____ Did an operation precede death? _____ Date of _____ Was there an autopsy? _____ What test confirmed diagnosis? (Signed) _____ (Address) _____ M D		
10 NAME OF FATHER _____			*State the DISEASE CAUSING DEATH or in deaths from VIOLENT CAUSES state (1) MEANS AND NATURE OF INJURY and (2) whether ACCIDENTAL, SUICIDAL or HOMICIDAL (See reverse side for additional space.)		
11 BIRTHPLACE OF FATHER (city or town) (State or country) _____			19 PLACE OF BURIAL, CREMATION, OR REMOVAL _____ DATE OF BURIAL _____ 19__		
12 MAIDEN NAME OF MOTHER _____			20 UNDERTAKER _____ ADDRESS _____		
13 BIRTHPLACE OF MOTHER (city or town) (State or country) _____					
14 Informant (Address) _____					
15 Filed _____, 19__ Registrar _____					

MARGIN RESERVED FOR BINDING
 WRITE PLAINLY, WITH UNFADING INK—THIS IS A PERMANENT RECORD
 Every item of information should be carefully supplied. AGE should be stated EXACTLY
 in years, months and days. If less than one year, state in years, months and days.
 Exact statement of OCCUPATION is very important. See instructions on
 back of certificate.

SECTION 18. STANDARD FORM OF DEATH CERTIFICATE

REVISED STANDARD CERTIFICATE OF DEATH

(Approved by U S Census Bureau and American Public Health Association).

Statement of occupation—Precise statement of occupation is very important, so that the relative healthfulness of various pursuits can be known. The question applies to each and every person, irrespective of age. For many occupations a single word or term on the first line will be sufficient, e g, *farmer or planter, physician, compositor, architect, locomotive engineer, civil engineer, stationary fireman*, etc. But in many cases, especially in industrial employments, it is necessary to know (a) the kind of work and also (b) the nature of the business or industry, and therefore an additional line is provided for the latter statement, it should be used only when needed. As examples: (a) *spinner*, (b) *cotton mill*, (a) *salesman*, (b) *grocery*, (a) *foreman*, (b) *automobile factory*. The material worked on may form part of the second statement. Never return "laborer," "foreman," "manager," "dealer," etc., without more precise specification, as *day laborer, farm laborer, laborer—coal mine, etc.* Women at home, who are engaged in the duties of the household only (not paid housekeepers who receive a definite salary), may be entered as *housewife, housework, or at home*, and children, not gainfully employed, as *at school or at home*. Care should be taken to report specifically the occupation of persons engaged in domestic service for wages, as *servants, cook, housemaid, etc.* If the occupation has been changed or given up on account of the disease causing death, state occupation at beginning of illness. If retired from business, that fact may be indicated thus: *Farmer, (retired 6 years)*. For persons who have no occupation whatever, write *none*.

Statement of cause of death—Name, first, the disease causing death (the primary affection with respect to time and causation), using always the same accepted term for the same disease. Examples: *Cerebrospinal fever* (the only definite synonym is "epidemic cerebrospinal meningitis"), *diphtheria* (avoid use of "croup"), *typhoid fever* (never report "typhoid pneumonia"), *lobar pneumonia, broncho-pneumonia* ("pneumonia," unqualified, is indefinite), *tuberculosis of lungs, meninges, peritoneum, etc.*, *carcinoma, sarcoma, etc.*, of _____ (name organ, "cancer" is less definite, avoid use of "tumor" for malignant neoplasms), *measles, whooping cough, chronic valvular heart disease, chronic interstitial nephritis, etc.* The contributory (secondary or intercurrent) affection need not be stated unless important. Example: *Measles, (disease causing death), 29 ds, bronchopneumonia (secondary), 10 ds*. Never report mere symptoms or terminal conditions, such as "asthenia," "anemia" (merely symptomatic), "atrophy," "collapse," "coma," "convulsions," "debility" ("congenital," "senile," etc.), "dropsy," "exhaustion," "heart failure," "hemorrhage," "inanition," "marasmus," "old age," "shock," "uremia," "weakness," etc., when a definite disease can be ascertained as the cause. Always qualify all diseases resulting from childbirth or miscarriage, as "*puerperal septicemia, puerperal peritonitis, etc.*" State cause for which surgical operation was undertaken. For violent deaths state *means of injury* and qualify as *accidental, suicidal or homicidal*, or as *probably such*, if impossible to determine definitely. Examples: *Accidental drowning, struck by railway train—accident, revolver wound of head—homicide, poisoned by carbolic acid—probably suicide*. The nature of the injury, as fracture of skull, and consequences (e g, *sepsis, tetanus*) may be stated under the head of "contributory" (Recommendations on statement of cause of death approved by committee on nomenclature of the American Medical Association).

Complete Certificates—All certificates must be correctly and completely filled out before filing. *A burial or removal permit will not be issued unless the certificate is complete.* Undertakers are required to secure the required certifications and present the certificate to the registrar.

Additional space for further statements by physician.

CHAPTER V.

SUNDAY FUNERALS

SECTION 19 VALIDITY AND EFFECT OF LAWS AND ORDINANCES

In most states, the Sunday laws specifically forbid doing of certain things on Sunday and then generally forbid the pursuit of one's ordinary calling, excepting works of necessity and charity. In the absence of an enactment by the state legislature on the subject, we believe that objection might plausibly be made to a municipal ordinance forbidding Sunday funerals that it is invalid as purporting to make unlawful what the state law makes lawful. That is, if the state law forbids performance of work and labor on the Sabbath, excepting work of necessity or charity, it clearly says that works of necessity and charity are lawful. And if the conduct of Sunday funerals may be said to be a work either of necessity or charity that would seem, according to our off-hand impression, to be fairly conclusive to the effect that a municipality could not make conduct of a funeral unlawful when it is lawful by provision of the state law, in the absence of some special charter or statutory authority.

So far as we have been able to ascertain no court of high authority has ever directly passed upon the question whether performance of a funeral director's services on Sunday is a work of necessity or charity. But two decisions of the Massachusetts Supreme Judicial Court unmistakably point in that direction. In one of these cases—*Davis v. City of Somerville*, 128 Mass. 594—the court recognized the point that travel on Sunday to attend a friend's funeral was a matter of "necessity or charity," provided that he proceeded to and from the funeral with reasonable directness.

In this case it appeared that plaintiff escorted a lady from Boston to Cambridge one Sunday in 1877 to attend a funeral. On leaving the cemetery and at her request, they drove back in a roundabout way, so that she might call on a sister-in-law at Charlestown. While so proceeding a defect in a highway under the control of defendant city caused injury to plaintiff. The court held that at the time of the accident plaintiff was not traveling pursuant to necessity or charity and, therefore, being unlawfully on the highway was in no position to complain of its condition. The trial judge instructed the jury

"The plaintiff could lawfully travel for the purpose of going to or returning from a funeral on the Lord's day; and if, in fact, he was returning from a funeral, though by a different route, he was not traveling unlawfully, unless the route taken by him was so unreasonable and inconvenient as to show that his purpose was not to return, but to do something else not a work of necessity or charity."

Approving the trial judge's conclusions, so far as the proposition that attending a friend's funeral on Sunday was a matter of necessity or charity, but holding that it was conclusively established that plaintiff was not at the time of the accident traveling on a privileged mission, the Supreme Judicial Court said, in reviewing the case:

"The statute making it unlawful and criminal to travel on the Lord's day, except from necessity or charity, has retained its place in our statute-book from the earliest times in the history of the state. Our Puritan ancestors intended that the day should be not merely a day of rest from labor, but also a day devoted to public and private worship and to religious meditation and repose, undisturbed by secular cares or amusements."

Whatever inconveniences might result at the present day from the literal and general enforcement of the Lord's day act, and whatever hard cases may have arisen under it, it is still the law of the land, to be judicially interpreted and administered according to its true intent and meaning, and upon the same rules as would govern us in the interpretation of any other statute.

"It is not easy to give a precise and strict definition which shall determine, as a matter of law, what facts constitute the necessity or charity intended by the statute. It was correctly ruled at the trial that the plaintiff could lawfully travel on the Lord's day for the purpose of going to or returning from the funeral, and also that

it was not necessary that she should return by the same, or by the shortest route, unless the route taken by him was so unreasonable and inconvenient as to show a purpose outside of the alleged necessity or charity"

In the earlier case of *Horne v Meakin*, 115 Mass 326, the same court had previously decided that it was not a violation of the Sunday law for a husband and wife to attend the funeral of his brother-in-law.

So, if as decided by so high an authority as the highest court of Massachusetts, it is lawful, under so strict a law as the Lord's day act still in force in the land of the Puritans, for one to go to the funeral of a friend or relative, provided that he "hurries back," the conclusion appears to be irresistible that the funeral director's service constitutes a work of "necessity or charity." And if his plea of such necessity or charity would be a good defense to a prosecution under the Sunday law of the state for having conducted a funeral, it seems to me that an ordinance forbidding Sunday funerals would be at variance with the policy of the state manifested in the exception of works of necessity and labor from the prohibition of Sunday work and labor. And because municipalities are subordinate to (in fact mere agents of) the state it follows that an ordinance forbidding funerals should find some authority for its existence in an enactment of the state legislature, modifying the rule that a Sunday funeral is a work of necessity or charity.

When a state undertakes to change its previous policy of permitting Sunday funerals under the general head of works of necessity and charity, by either enacting a statute directly forbidding such funerals or by permitting cities to enact prohibitory ordinances, question is apt to be raised in the courts as to whether even the legislature can forbid interments on the Sabbath.

Here, again, is a question which does not appear to have been passed upon by the courts. But in the absence of some ground on which it may be reasonably said that prohibition of Sunday burials tends to endanger the public safety or welfare, it fairly may be predicted that almost any court would uphold the validity of such a measure.

But it is not to be overlooked that to have validity police statutes of this kind must have some natural tendency to promote the public welfare. The legislature is not omnipotent in the matter of tabooing conduct.

Yet the same general reasoning that supports the validity of the usual Sunday law applies to the funeral director.

"As statutes which designate Sunday as a day of rest and prohibit the doing of specified acts on that day have for their object the promotion of the health, peace, and good order of society by requiring man to take a periodical day of rest, they are within the domain of the police power. They are essentially civil, and not religious, regulations, whose validity is neither strengthened nor weakened by the fact that the day of rest they enjoin is the Sabbath. The few instances in which such statutes have been held to be invalid are cases where a single class of persons have been singled out and legislated against, and the classification was so arbitrary and the discrimination so unreasonable as to fall under the head of class legislation." 37 Cyc 541.

Contention was made in a case passed upon by the Oregon Supreme Court that the law of that state which prescribes a fine for keeping places of business open on Sunday was invalid as being class legislation because it exempts undertakers, drug stores and a few other lines of business. The court, however, upheld the law, declaring that the excepted occupations "minister to wants that are more imperative as a rule than those supplied by the general run of business" (*State v Nicholls*, 151 Pacific Reporter, 473).

The plaintiff rode about six miles on Sunday on a bicycle to attend the funeral of a friend, and was injured when returning by another road, four miles longer than the direct road to his home. Held, that the act was not prohibited by the Maine statute relating to the Lord's day, so as to be within a clause of an accident policy preventing recovery for an injury received "while or in consequence of violating any law" (*Maine Supreme Judicial Court, Easton v. Atlas Acc Ins Co*, 36 Atlantic Reporter, 1048).

An inquest held by a coroner, and his commitment to jail of a person accused of murder are so far ministerial, rather than judicial, acts that they are not void because done on Sunday (*Maryland Court of Appeals, Blaney v. State*, 21 Atlantic Reporter, 547).

That the funeral director, and his assistants, need one day of rest in seven, just as much as any other classes of persons goes without saying. Therefore, it seems that to annul a statute against Sunday funerals it would be necessary to show some urgent necessity from the public standpoint for interments on the Sabbath. Were it true, and we understand it to be well settled as a scientific fact that it is not true, that there is any practical necessity for Sunday funerals, because of peril to the public health in having bodies remain uninterred, that might be held to be a bar to a valid

law against Sunday funerals. On that hypothesis, the law would be as unreasonable as a statute which would purport to prohibit a physician from administering medicine on Sunday to a patient in immediate need of it, or which would forbid performance of surgical operations immediately necessary to avoid loss of life, or which would forbid going to the physical labor of pulling a drowning man out of a lake.

But we understand that it is rarely ever that circumstances do not admit of a postponement of a funeral over Sunday. And rare exceptions can be covered by an appropriate exception in the statute, or by merely leaving it to the sound sense of prosecuting authorities to withhold prosecution in any case where collision with the provisions of the law is practically unavoidable.

Our observations are not to be misconstrued as manifesting opposition to Sunday laws against funerals. We merely undertake to draw attention to the point worthy of consideration that before a municipal ordinance forbidding such funerals may be upheld in the courts in a given state as a valid measure it may be that some special enactment by the state legislature will be prerequisite.

CHAPTER VI.

RIGHTS IN STREETS AND HIGHWAYS

SECTION 20 RIGHTS IN GENERAL

As traffic becomes more and more congested on streets and roads the question of the scope of power in the public authorities to restrict use of such ways becomes more important and interesting.

In discussing the subject in the case of *Greene v City of San Antonio*, 178 Southwestern Reporter, 6, the Texas Court of Civil Appeals incidentally noted that it has become an established proposition of law that right of way may be given to funeral processions, even as against pedestrians who rudely attempt to pass between vehicles. Dealing with general aspects of the subject, the court said:

"The highways of a state, including the streets in cities and towns, are under the paramount and primary control of the Legislature, and all powers of cities and towns over streets must depend upon the authority granted in special charters or general laws applying to such municipalities. Whatever power the state has over its highways can be granted by it to the municipalities it has created, and in this instance 'executive control and power' over the streets, alleys, sidewalks, and public grounds within its bounds have been granted to the city of San Antonio, not only in the special charter granted it, but by the general laws of the state. The streets do not belong to the city or town in which they may be situated, but all powers over them are derived from the Legislature by charter or statute. They are affected by a trust for the public use and benefit. The primary design in laying out and constructing streets is for the purpose of travel and passage for the public, and rights as to ingress and egress, nearly resembling private rights, are also given abutting owners. Having exclusive control over the streets the Legislature, or those to whom it has delegated power over streets, have the right and authority to impose reasonable terms and conditions upon the right to use them. Subject to rights of abutting owners, streets may be closed to all business traffic, the speed of vehicles regulated, obstructions may be prevented or removed, licenses to use the streets may be required, travelers may be required to obey the directions of the police, vehicles having heavy loads may not be permitted on certain streets, or be required to have wide tires, the weight of loads may be limited, and hacks may be compelled to remain at certain stands. These are only a part of many regulations that have been held valid. Dill Mun Cor secs 1163-1167.

"The only absolute right that the private individual has in the streets of a city, not including the abutting owner, is the right to convey himself or property from one place to another, and even that right may be regulated. The individual usually has the right to cross a street whenever he may so desire, but the municipality may prevent him from crossing at any place except corners, and under proper circumstances may prevent him crossing at all, as when there may be danger or when funeral or other processions may be passing. No individual has the inherent right to use a street or highway for business purposes. No man has the right to use a street for the prosecution of his private business, and his use for that purpose may be prohibited or regulated as the state or municipality may deem best for the public good. Not having the absolute right to use streets for the prosecution of private business, within the bounds of reason, where no discrimination is shown, persons or classes of persons may be controlled or regulated in the use of streets.

"This is a self-evident proposition for, if it were not so, sidewalks and streets could be rendered impassable by those vending their wares or soliciting patronage."

SECTION 21 FUNERAL PROCESSIONS

Note: Liability of funeral directors for injuries caused by negligent driving of funeral vehicles is dealt with in a later chapter.

Doubtless in many towns and cities there are ordinances giving funeral processions moving along streets the right of way over general traffic. The courts have upheld the validity of ordinances giving the right of way to fire-trucks, mail wagons and ambulances, and it would seem that it would be a reasonable exercise of a city council's power to control use of the streets to declare that a funeral procession shall have precedence over general travel.

Cutting through a funeral procession, unless under exceptional circumstances, is an ill-mannered act, to say the least, but in the absence of legislative traffic regulations there is no legal penalty for it, except as there may be a right of action for negligently causing a collision.

It has been decided that, in the absence of special ordinance or statute, a funeral procession has no legal right-of-way as against other vehicles encountered along a street or highway. But it is recognized that the existence of a general custom in a community to give such processions a right-of-way may be taken into consideration in determining whether a hearse or other funeral vehicle has been negligently driven.

In the case of *White v. Wilmington City Railway Company*, 6 Pennewill's Delaware Reports, 363, plaintiff sued for injuries caused by a collision between a street car operated by defendant and a coach driven by the plaintiff in a funeral procession. Judgment in plaintiff's favor was affirmed by the Delaware Supreme Court.

The main point argued by the street railway company on appeal was that the trial court improperly permitted plaintiff to give evidence of a general custom under which defendant's street cars had stopped to allow funeral processions to cross its tracks without interruption. On this point the opinion on appeal says:

"The custom was not pleaded. And it was contended that it was not competent to prove it without being pleaded. In overruling the objection the [trial] court said:

"In the case of *Foulke v. Wilmington City Railway Company* (5 Pennewill, 363), we admitted this same question upon the ground that while there was no duty resting upon the defendant company to stop and allow funeral processions to pass, yet if they had been in the habit of doing it, and thereby induced, on the part of the drivers who were familiar with the custom, the belief that they would stop, it entered into the question of the driver's negligence'. . . . 'We don't think it is necessary to be alleged in the declaration'. And in their charge to the jury, respecting this matter, this court further said:

"We know of no law requiring a trolley car to stop at the intersection of streets and wait until a funeral procession has passed, nor of any law giving to a funeral procession the right-of-way over cars or other vehicles or persons properly using a highway of this state. If by courtesy such privilege has been given by trolley cars and by others using the highway, such courtesy imposes no duty upon the person extending the courtesy, nor does it in any manner relieve such person from all reasonable care and precaution in so using the highways as to prevent accident.

"If you should find from the evidence in this case that the uniform and continuous usage or practice of the defendant company had been to stop its cars at crossings and wait until a funeral procession passed by, and that such usage was known to and relied upon by the driver, the plaintiff in this case, at the time of the accident, we say to you that such method of dealing with the public on the part of the company, and so known to the driver, may be taken into account by you in estimating the degree of diligence required of the plaintiff in looking out for an approaching car before he crossed the railway track, for in such case he might reasonably presume or infer the continuance of that usage.

"To justify such presumption, however, such usage must have been uniform and continuous; even then the failure to observe such usage would not amount to negligence on the part of the defendant company. It would not relieve the driver of a reasonable care in making such crossing. He would have no right so to presume, if he actually saw the car coming down upon him, or if by the reasonable use of his senses he might have seen its approach.

"It may be stated that, as a general rule, no legal right can grow out of mere courtesy, however uniform and long continued, nor will such courtesy impose a legal obligation upon the person extending it."

"The alleged practice of the defendant company to stop its cars and permit a funeral procession to pass without interruption was not a custom or usage which had the force and effect of a law, binding upon the defendant company. It was a course of conduct, if it existed, in the nature of an accommodation indulgence or courtesy, prompted, doubtless, by considerations of respect, and if known among drivers in funeral processions to exist, it was competent to prove it, though it was not pleaded."

For a recent expression of legislative policy on the subject of granting right of

way to funeral processions, see reference in the Michigan section of Part II of this book to a law enacted at the 1923 session of the legislature of that state.

In the case of *Goodwin v Avery*, 26 Connecticut Supreme Court of Errors Reports, 585, it appeared that plaintiff and defendant, who was sued by the former for assault and battery, were hackmen. A funeral director, acting under authority from deceased's family, employed defendant to attend with his hack. Plaintiff was engaged, without the funeral director's knowledge, by a relative, but not a member of the family, of deceased. Plaintiff and defendant engaged in an affray when the former attempted to take the place in the procession which had been assigned by the funeral director to defendant. Plaintiff, having gotten the worst of the encounter, sued defendant for his injuries, but was denied recovery, the court holding that he was in the wrong. The court decided that the portion of the street upon which the procession was being formed was in the lawful occupation of the family having the funeral, and that they had the right to determine the order of the procession, which right they could exercise directly or through a person employed to conduct the funeral, and that, therefore, defendant, having been assigned by the funeral director to the place in question, had a right to it, and that, having the right, he might lawfully use all reasonable force to prevent its occupancy by plaintiff. The court further held that where two parties, each without better right than the other, strive to occupy the same place in a public highway, he is in the wrong who first uses force. Although the direct question in controversy in this case related to the liability of one hackman for assaulting another, the decision of the court is important to funeral directors as upholding their right to control the movement of vehicles on a highway in handling a procession.

"I have an undertaking establishment in a small country town in California," wrote a funeral director. "I wish to know how much right I have to the streets during a funeral. Have I the right to drive up and park on the left side of the street? The cemetery is so located that by so doing I do not have to turn around with the funeral procession after the services are over. The city marshal informed me that the city ordinance reads all persons parking on left side are violating the law."

Unless the ordinance in question makes an exception in favor of funeral processions, we were of the opinion that they must proceed with the same obedience to the ordinance as required of other vehicles, no matter what their kind.

Municipalities have broad powers to adopt parking and other traffic regulations and unless such a regulation unreasonably interferes with the movement of a funeral procession we do not believe that the funeral director can claim exemption from obedience to the ordinance. It is largely within the discretion of the city council to provide such exemptions as are deemed proper. We therefore suggested that the council of this town be requested to modify the ordinance so as to exempt funeral processions. If this request should be denied it would be better for the funeral director to conform to the ordinance than to attempt to have the regulation set aside by a court proceeding.

State legislatures and municipal councils should grant such exemptions from traffic regulations in favor of funeral processions as circumstances may be shown fairly to require. However, until such exemptions are expressly granted such processions do not enjoy special privileges.

CHAPTER VII

SALES OF GOING BUSINESS

SECTION 22 EFFECT OF BULK SALES LAWS

The "Bulk Sales Law" now in force, with varying provisions, in different states, declares that sales of mercantile stocks, etc., in bulk and not in the ordinary course of trade, shall be void as against the seller's creditors, unless notice is given such creditors before the sale is completed and the purchase money is paid. These laws fix the manner of giving notice and how long it must be given before the sale is effected. In most instances five days' notice is necessary and it is required to be given by mailing. This class of legislation is, as stated by Mr. Justice Vann, of the New York Court of Appeals, directed primarily against merchants to prevent the heretofore common practice of transferring mercantile stocks in fraud of the seller's creditors. Most of the cases which have been passed upon by the courts under these laws have arisen in the ordinary retail mercantile lines, but there is at least one appellate court decision which stands as authority for the proposition that the undertaking trade is affected. In the case of *People's Savings Bank v. Van Allsburg*, 131 Northwestern Reporter, 101, decided May 8, 1911, the Michigan Supreme Court decided that the vehicles, appliances, furniture, embalming fluid, caskets, etc., of a funeral director's business are not "fixtures" within the meaning of the Bulk Sales act of that state, but that caskets, steel vaults, robes, and caskets do constitute "merchandise" within the terms of the law. It was also, decided in the same case that notice must be given all creditors, and not merely to merchandise creditors. After viewing all the reported decisions under these laws, I am convinced that no purchaser of a funeral director's stock, and specially that kept for resale, such as caskets, robes, vaults, etc., can safely purchase without insisting upon compliance with the Bulk Sales Law, if it happens to be in force in his state. In fact, regardless of that law, the only safe thing to do in purchasing any business is to assure oneself that all of the seller's creditors are paid, so as to avoid any claim by them of right to proceed against the property purchased. It is decided, however, that the Bulk Sales Law does not apply to a sale of an interest in a partnership by one partner to another.

In the Michigan case, above cited, it appeared that defendants bought an established business, receiving a bill of sale which described the following property:

"One funeral car, one casket wagon, two sets of bobs, two sets of double harness, one rubber-tired buggy, one lowering device, three floor rugs, one church truck, three cooling boards, one slumber robe, five door badges, two pair of pedestals, one set of embalming tools, two candelabra, four dozen chairs, one roll-top desk, two cases of embalming fluid, one earth cover, one set of funeral nets, and all other fixtures used in the undertaking rooms of said first party, and all caskets, steel vaults, robes and casket hardware, belonging to E. W. Howell and now in his possession at his undertaking rooms in the Davis building."

No attempt was made to comply with the then existing bulk sales law of Michigan, and litigation arose concerning the right of plaintiff bank, a creditor of the seller, to subject the property to its claim. Dismissing of the case on appeal, the Supreme Court said:

"Was any of the property fixtures? The property conveyed was not of a character which would admit of its becoming annexed to real estate. It was not designed to be a fixture, and was not used or treated as such. Most of the property was similar in kind to that conveyed in the case of *Bowen v. Quigley*, ante, 337 (130 N. W. 690), decided March 31, 1911, and we think this question is ruled by that case."

"2. Was any of the property merchandise? Merchandise is defined by Webster as 'objects of commerce, whatever is usually bought and sold in trade or market by merchants.' We think that 'merchandise,' as used in this act, must be construed to mean such things as are usually bought and sold in trade by merchants. Measured by this

standard, the caskets, steel vaults, robes and casket hardware must fall within the meaning of that term. These articles were bought to sell again. They were not purchased with the intent to keep or use in his business. The fact that they were not sold singly, but were usually sold in connection with a casket, would not take away from them the character of merchandise.

"3 Does Act No. 223 require notice to creditors other than merchandise creditors? Section 1 of the act provides that the sale shall be void as against the creditors of the seller, unless the statutory notice is made giving a full, accurate and complete list of his creditors. Section 3 provides that if the purchaser does not comply with the provisions of the act, upon application of any of the creditors he shall become a receiver, etc., and the same section further provides that if he shall conform to the provisions of law he shall not be liable to any of the creditors of the seller. If the legislature intended to restrict the notice to any particular class of creditors, it did not so indicate by the language used. The language made use of is clear and free from ambiguity, and no room is left for the contention that the legislature intended it to apply to any particular class of creditors."

See, also, Chapter XII on the Funeral Director as an Insolvent Debtor

SECTION 23 MISREPRESENTING VALUE OF STOCKS

A case passed upon by the Kansas Supreme Court throws light on the rights of one who purchases a funeral director's stock of goods, equipment, etc., when he claims that the seller misrepresented its quantity or value.

Plaintiffs sued to recover damages from defendant for a claimed shortage of land traded by the latter for a hearse, store fixtures and other property. Defendant counter-claimed for damages because of an asserted shortage in property delivered to him, claiming that plaintiffs represented that the property was worth \$12,000, and guaranteed would invoice that much, whereas it invoiced only \$16,975. Plaintiffs claimed that any right to make the counterclaim was waived by the fact that defendant made payments on the contract, and otherwise recognized the trade as being consummated, after making the invoice.

But, following a well-settled rule of law, the court held that while making of payments by defendant after discovering the falsity of the representations made by plaintiffs did waive any right to have the trade cancelled, right to recover damages was not thereby waived. One who has been induced to contract to his injury by false representations has two remedies, rescission and damages. If he rescinds, the contract is disavowed. If he claims damages, otherwise standing by his bargain, the contract is treated as binding, subject only to his right to collect damages to the extent of the loss resulting from the fraud practiced upon him.

It was also claimed that the statements made by plaintiffs amounted to a mere expression of opinion as to the value of the property, within the rule of law that one is not liable for falsity of a matter stated as an opinion, as distinguished from a statement of fact, but the court decided that a statement that a stock of goods will invoice a certain amount is a statement of fact and actionable if false. (170 Pacific Reporter, 998.)

SECTION 24 RIGHT TO RESCIND PURCHASE OF BUSINESS

If a person is induced to buy an established undertaking business under a fraudulent misrepresentation made by the seller of any material fact bearing upon the buyer's chances of making the business profitable, the latter may rescind the trade and require repayment of the purchase price, if he acts promptly upon discovering the fraud, and a delay of a few weeks in attempting to make the business realize profits which the seller represented could be made does not prevent the buyer from pursuing this remedy. The buyer is not entitled to rescind the transaction, however, merely because he paid too large a price for the business, in the absence of fraudulent representations by the seller as to the extent of business previously done. These statements are sustained by the decision of the Oregon Supreme Court that was handed down in the case of *Kochler v. Dennison*, 143 Pacific Reporter 649. Fraudulent misrepresentations by the seller of a business that the buyer could obtain a "lease" on the building in which the business had been conducted was held by the court to constitute such fraud as to justify the buyer in rescinding his purchase, if it appeared that the owner was not willing to give longer possession than from month to month, since the parties must have understood that a lease could be obtained for a reasonable term which would give the buyer the benefit of an established location.

If the seller of a business misrepresents the amount of business which he has previously done, thus overstating the value of the good will of the enterprise, the purchaser, by acting promptly, is entitled to rescind the contract, or, if he elects to retain the business, he is entitled to recover the difference between the value the business would have had, had it been as prosperous as represented, and its actual value.

CHAPTER VIII

CONTRACTS NOT TO ENGAGE IN BUSINESS

SECTION 25. VALIDITY IN GENERAL

As in other trades and professions, there is an increasing realization by funeral directors who buy established businesses of the importance of requiring the seller to enter into a contract binding him not to engage in competition with the buyer within a certain period of time (usually five years). Such agreements are affected by some important rules of law which both buyer and seller should understand, for the law is very jealous of contracts which tend to create a monopoly by stifling competition. In fact, it was formerly held that no valid agreement could be made not to engage in business. The reason for this was that it is against public interest to tie the hands of any man so as to prevent his following a useful occupation, and especially a trade or profession for which he is peculiarly qualified by training and experience. But this policy of the law has been considerably modified, in recognition of the rights of persons who buy established enterprises on the faith of being permitted to enjoy their purchases uninjured by the seller's attempt to filch back good will which he has sold for a valuable consideration. The law as it now stands is well summarized by a decision of the West Virginia Supreme Court of Appeals handed down in the case of *Boggs v. Friend*, 87 Southeastern Reporter, 873. That court announced the following rules applicable to this subject:

A contract between the seller and the purchaser of an established business, binding the latter, as an incident of the sale, not to re-engage in a rival business within the neighborhood thereof or in such close proximity as to detract from the natural patronage of the establishment sold, is valid.

In such cases the test in determining the validity or invalidity of the contract is the reasonableness of the restraint imposed, and it will be enforced as to time and space only to the extent necessary to protect the rights of the parties and the interest of the public therein. Although such a contract be not in terms limited in time or space, it will be construed as intending only such sufficient time and reasonable space as may be necessary to protect the purchaser in the enjoyment of the business bought.

So, too, there is a strong tendency of the courts to limit the time during which the seller shall be debarred from competition with the buyer, it being generally held that if the seller refrains from competition for four or five years, the buyer is given sufficient opportunity to become acquainted in his new territory and to hold his business against such competition.

From the standpoint of the buyer, the contract of sale should expressly recite that the seller transfers the good will of the business, as well as the visible property connected with it. But even when there is no such express provision the courts will infer that it was intended to sell the good will, if the circumstances reasonably point to such intention, and especially where the sale includes the real estate on which the business has been conducted by the seller.

The legal remedy provided for the purpose of preventing breach of such agreements as are here considered is suit to enjoin the seller from breaking his contract, when it conclusively appears that he has either broken it or is about to do so. Claim for damages resulting from the breach may be coupled with the application for injunction.

SECTION 26. NECESSITY FOR DISTINCT AGREEMENT

Although the courts will sustain a reasonable agreement which precludes one who has sold a funeral establishment from re-engaging in the business in the same territory, especially where the competition is to be barred for only a few years, such an agreement must be clearly made. A contract of this nature will not be inferred from mere declarations by the seller as to what he intends to do in the future. However, where one sells the good will of such an establishment he will not be permitted over

his successor's objection to advertise his new business as being a continuation of the old one

The foregoing observations are supported by an interesting case to be found in the law reports—Hall's Appeal, 60 Pennsylvania Reports, 458. This decision was handed down in 1869, but still seems to be the leading judicial precedent on this particular branch of funeral law.

John M Hall, of Philadelphia, sold his funeral establishment in that city, the conveyance including the good will of the business and his stock, "consisting of mahogany and walnut coffins, etc." Afterward Hall re-engaged in the undertaking business in Philadelphia in competition with his successor, John C Rulon. Thereupon Rulon brought suit to enjoin Hall from resuming in competition with him. The trial court granted a decree in plaintiff's favor, but it was reversed, excepting in so far as it restrained defendant from conveying the impression to the public that his new business was a continuation of the old. The opinion on appeal reads as follows:

"We have no doubt of the validity of such a contract, as is alleged in the bill, if founded on a sufficient consideration, or of the power of the court to restrain its breach by injunction. Our doubt in this case arises from the insufficiency of the proof to establish the existence of the alleged agreement. It cannot be inferred from the sale of the good will of the business, and it is expressly denied in the answer. The sealed agreement between the parties, given in evidence by the plaintiff, contains no stipulation or covenant on the part of the defendant, either to retire from the business or not to resume it again in the city of Philadelphia, and in this respect it fully corroborates and sustains the answer. Nor is there any sufficient evidence that such a stipulation was omitted through the fraud of the defendant, or the mistake of the parties. The only evidence from which such an inference could possibly arise is the testimony of Joseph R and Alexander Black, but neither of these witnesses proves that it was one of the express terms and conditions of the sale, that the defendant was to retire from the business, and not to resume it again in the city of Philadelphia. On the contrary, their testimony amounts to no more than the declaration of the defendant's intention not to go into the business again in Philadelphia on account of the state of his health, which had compelled him to give it up. The fair inference from their testimony in connection with the blank left in the agreement is, that while the defendant declared it to be his intention and purpose not to resume the business, he was unwilling and refused to bind himself by a positive stipulation not to resume it at any time thereafter."

A lawsuit involving the right of one funeral director to restrain another from competition on the theory of a purchase of good will by the former from the latter was presented to the California District Court of Appeal in the case of *S. S. Russell v A. M. Russell and wife*, 178 Pacific Reporter, 307.

Plaintiff, the father of defendant A. M. Russell, purchased an established funeral business at Lakeport, Cal, in 1913, and employed the defendants to run it for him. There was an oral agreement that defendants might purchase the enterprise on certain terms. This agreement was later reduced to writing, with provisions that on completion of the agreed payments by defendants plaintiff would give them a bill of sale.

Defendants continued to conduct the business for about three years, but paid nothing toward the purchase price. At the end of this time defendant returned the establishment to plaintiff and there was a cancellation of the contract referred to. Defendants executed what purported to be a bill of sale to plaintiff, although they had never acquired title to the good will or stock, ownership of which had remained in the father, subject to the contract for sale to defendants. This bill of sale recited that defendants assigned to plaintiff "all our right, title and interest in and to the undertaking business heretofore and now carried on by us . . . together with all stock and tools of every description pertaining to said business, the good will thereof, books of account, burial records, wagons and harness, and all else whatsoever belonging and pertaining to said business, including all accounts due and owing to said business at this date." The consideration named in this document for the assignment and transfer mentioned was that plaintiff would assume and pay certain outstanding debts.

Shortly after this settlement between the parties, defendants opened in the same town, under a new and distinctive name from that formerly used in the old business, a new funeral establishment, and continued to conduct the same until enjoined by an order of the superior court in a suit brought by plaintiff. The superior court, also, awarded \$1,000 damages against defendants.

This judgment, however, was reversed on appeal by the California District Court of Appeal for the reasons stated, as follows.

"The plaintiff contends that by the bill of sale, quoted in part above, the defendants

sold to him the good will of the business, and by such sale they are precluded from setting up an opposing business in the same town

"The original contract of sale certainly vested no title to the business in the defendants. Its cancellation, after defendants' default in payments, was a right which the plaintiff had under the very terms of the agreement. The purported bill of sale given at the same time by the defendants to the plaintiff certainly conveyed nothing, because the defendants had nothing to convey. It purported to convey all defendants' right, title and interest in the business and good will thereof. But such right, title and interest amounted to nothing whatever, because no title had been vested in the defendants by the executory contract. Their only right thereunder was a right to a conveyance after the completion of all the payments. No payments having been made, they had no rights whatever, and if there was any question about this matter, it was settled by the cancellation of the contract by mutual consent, which expressly released both parties from any obligations under that agreement. If, therefore, the plaintiff, under said purported bill of sale, agreed to assume any bills for which he was not previously liable, he did so without consideration.

"The plaintiff contends that the defendants conveyed to the plaintiff, by this purported bill of sale, the good will of the business. We think the good will of a business is something inseparable from the ownership thereof. The good will of a business cannot be conveyed by one party while the business to which it attaches is owned by another party. The defendants did convey all their right, title and interest in the good will of the business to the plaintiff, but their conveyance amounted to nothing, as they had no title whatever to the business. It cannot therefore be argued that the defendants impliedly agreed not to engage in a similar business in Lakeport. They were under no obligation to refrain from engaging in such business before entering into the contract of purchase and sale. The entire transaction presents nothing more than a possession under a contract, a breach of the contract, and a return of the property to the seller. Certainly the defendants have not lost their right to engage in business by reason of such a transaction.

"The facts may present a case of hardship upon the plaintiff, but we think he was bound to protect himself against the failure of the defendants to keep their contract. Since he merely provided that, in case of default, the business should be returned to him and the contract canceled, the courts cannot give him an additional remedy because of an incidental loss which he seems not to have taken into consideration when he made his contract."

SECTION 27 VALID CONTRACTS

There is a decision of the Illinois Supreme Court (162 Illinois Reports, 377) which has an interesting and important bearing on this subject. In sustaining the validity of a contract which bound the seller of an undertaking and livery business to refrain from setting up another establishment of the same kind in the city of Chicago, where the business sold was situated, the court said:

"It is charged, that the agreement of appellant not to engage in the livery and undertaking business in the city of Chicago for a period of five years is invalid as being in restraint of trade. Undoubtedly contracts in total restraint of trade are void, and upon two grounds, first, because of the injury to the public by being deprived of the industry of the party who is restrained, and, second, because of the injury to the party himself by being deprived of the opportunity to pursue his occupation and thereby support his family. A contract in restraint of trade is thus total and general, when by it a party binds himself not to carry on his trade or business at all, or not to pursue it within the limits of a particular country or state. Such a general contract in restraint of trade necessarily works an injury to the public at large and to the party himself in the respects indicated, and is, therefore, against public policy.

"But a contract, which is only in partial restraint of trade, is valid, provided it is reasonable and has a consideration to support it. The restraint is reasonable, when it is such only as to afford a fair protection to the interests of the party in whose favor it is imposed. If the restraint goes beyond such fair protection, it is oppressive to the other party and injurious to the interests of the public, and, consequently, void upon the ground of public policy. A contract in restraint of trade, to be valid, must show that the restraint imposed is partial, reasonable and founded upon a consideration capable of enforcing the agreement. Courts will not inquire whether the consideration was adequate or equal in value to that which the party loses by the restraint. The contract must be construed by the court, and its reasonable character and the consideration for it determined" (Linn v Sigsbee, 67 Ill 75). Where the restriction embraces too large a territory it will be unreasonable and void as being wider than is necessary for the protection of the party in whose favor it is imposed, but where the restriction limits

the exercise of the occupation within reasonable bounds, it is valid as being no larger than is necessary to protect the covenant

"Applying these authorities and the principles therein announced to the case at bar, we are of the opinion that the contract between appellant and appellee was valid. It was only in partial restraint of trade. It was limited in time to the period of five years, and in space to the city of Chicago. One element of the value of the business transferred by appellant to appellee was the probability that the customers of the former would continue to trade with the latter, and this probability was increased and the value of the purchase enhanced by the agreement of appellant not to engage in the same business in Chicago for five years. Such an agreement was in part an inducement to appellee to make the purchase, and was based upon a sufficient consideration. Appellant was at liberty to engage in any other business, or in the same business in any other place than Chicago. There was, therefore, only a limited restraint upon him as a tradesman, and not upon trade generally. Where one person is restrained from doing a particular business in a particular place, competition is left open to all others, and there is no injury to the public. The person restrained, in such case, merely yields to another the use of what he has disposed of to that other for value. The limitation here did not go beyond what was necessary for the protection of appellee in the prosecution of the business purchased by him, and was, therefore, reasonable."

In a later case (*Linneman & Moore v Allison & Yates*, 134 Southwestern Reporter, 134), one who sold his funeral establishment in Covington, Ky., together with the good will, contracted not to re-enter the livery and undertaking business within fifty miles of that city, for ten years. This contract was sustained by the Kentucky Court of Appeals as being valid, it appearing that the business extended throughout several adjoining counties. In this case, the court recognized the fact that it is difficult to determine just how far such a contract may go as to the extent of territory and time throughout which the seller is to be prevented from resuming his old line of business.

The right of a former employer to an injunction against breach of the employee's agreement not to engage in the undertaking business was upheld by a Colorado judge a few years ago in the case of *Adams v Armstrong*, decided at Montrose, Colo.

John H. Adams employed Robert F. Armstrong to manage a funeral directing establishment. The written agreement between them contained this clause:

"It is finally understood and agreed by said party (Armstrong), that in consideration of said employment, that in the event of the termination of this contract before its expiration, or from the natural termination thereof, he will not re-enter, either directly or indirectly, as principal or employee, within the limits of San Miguel county, Colorado, the furniture or undertaking business, or either of them, for a period of five years from the time of the termination of such employment."

The court found that Armstrong violated this agreement by opening a funeral directing establishment in the same town, Telluride. The judge in granting an injunction handing down the following opinion:

"On its face I do not see anything unfair about this contract. I do not see any reason why, from the standpoint of equity, or otherwise, it should not bind the party of the second part as to his agreement not to engage in business as therein set forth. It is a contract by the terms of which the party of the second part is to receive an increased compensation each year; and for two years at least the party of the first part would be bound in law to continue the party of the second part in his employ."

"Under the terms of the contract, the party of the second part is the manager of the business, and as one of the considerations on his part he agrees to devote his time and efforts and ability to build up the business. It naturally follows from a contract of this kind that the party of the second part is supposed to and practically is familiar in every detail with the business and all its branches and all that implies, it being his duty to give his whole time and attention to the business, to familiarize himself with every detail, to exert himself to the utmost to build it up. One can readily understand what was in the mind of the party of the first part, among other things; namely, that a man he was employing in that way, whose compensation he was increasing each year, upon whom the party of the first part entirely relied, should not, before the end of the time designated in the contract, throw up his hands and go into the same business. And it seems to me, as I said in the beginning, that it is a fair contract, and that no undue advantage was taken, and that there is nothing in the terms of the contract that would suggest a want of equity in any regard."

"It seems to me that this differs very largely from the case of the man who goes into the employment of another man as a tinner, or as a clerk, or as a barber. There the thing to be done is narrowed, here the thing to be done is of the broadest kind and nature. In other words, his whole business and interests and all of his investment is committed to the charge and keeping of this party of the second part. So I say, I do not

think that there is anything inequitable in providing that he should not engage in the same business in a restricted territory within a designated time

"It is suggested that after this contract had been enforced for some time there was a mutual understanding that the contract was to be at an end, and it is argued that, inferentially, it was the understanding that thereafter the provisions of the contract should not be binding. I do not reach that conclusion from the evidence. It is true that there was some misunderstanding, that Mr. Adams objected to some of the things that had been done—but it is not necessary to enumerate them—but it is not suggested, even by the defendant, that he said to him, 'You are discharged'. And the evidence shows that he continued in that employment, that the plaintiff furnished him with the means of getting the certificate or diploma that would enable him to act as an embalmer. And if the plaintiff had understood that the employment was at an end and that he was free to engage in another business, it does not seem reasonable to me that he would equip him with the means for doing that which he sought to provide against in the contract.

"It is evident from the evidence of the plaintiff that he regarded the defendant as a valuable man, not only regarded him as such at the time he entered into the contract but regarded him as such at the time he returned from Denver, where he had taken this course, or secured this authority to engage in the business of an embalmer. I do not think that there is any question but that if the defendant desired to continue in the employ of the plaintiff after he had returned from Denver that he could not have done so, that the job was open to him, and if he did not take it it was for reasons of his own. As counsel for the plaintiff suggests, he perhaps saw opportunities that he thought would be greater to his advantage in business in violation of this contract.

"But to put it in a very few words. I think this is a fair contract, that the plaintiff has been fair with the defendant. And I do not think the evidence discloses any reason, either in law or equity, why the defendant should be excused from performance of it on his part.

"And the court finds the issues in favor of the plaintiff, and that a permanent injunction issue as prayed."

Part of the decree entered in accordance with this decision follows.

"It is considered, ordered, adjudged and decreed, that the defendant, Richard W. Armstrong, his agents, servants and employees, and all acting for, through or under him, be and the same are restrained and enjoined from, directly or indirectly, as principal or employee, within the limits of the county of San Miguel, state of Colorado, engaging in the furniture and undertaking business, or either of them, for a period of five years, from and after the 26th day of December, 1917, and the said defendant is hereby adjudged and ordered to faithfully, in letter and spirit, keep and perform, during the said period of time, that certain covenant, condition, promise and agreement contained in the written contract set forth in the complaint herein."

The decision of the Colorado judge is in line with the rule of law stated in the following paragraph and supported by the decisions cited under that paragraph. But in Michigan, and, perhaps, one or more other states, there is in force a statute limiting the time during which an employee may be bound to refrain from accepting competing employment. Therefore, the importance of taking local counsel in preparing contracts of this kind becomes apparent.

Where a contract is made for the employment of a person in a certain trade or business, it may be accompanied with an absolute and unlimited restraint against carrying on the same trade or business for another person or in any other way during the employment or for a reasonable time after the term of service has elapsed.

Sternberg v. O'Brien, 48 N. J. Equity Reports, 370.

Kellogg v. Larkin, 3 Chandl. (Wis.) 133.

Carter v. Alling, 43 Federal Reporter, 208.

Turner v. Abbott, 116 Tennessee Reports, 718.

SECTION 28 INVALID CONTRACTS

A firm dealing in undertaker's supplies and furniture in a Kentucky town sold out to plaintiff under a contract reading as follows:

"We have this day sold to T. H. Fuqua our furniture and undertaking business on the following terms: What goods we have in house at \$1.15 on the \$1.00 (wholesale or cost price, no carriage added). What goods bought by us and not yet received, at cost and carriage. Hearse at cost and carriage. We obligate ourselves individually and as a firm not to engage in furniture or undertaking business so long as said Fuqua or any firm in which said Fuqua is interested in is doing business in the town of Cadiz, Ky. In consideration of the above trade we have accepted said Fuqua's check for \$100 on trade, balance to be paid in cash when invoice is taken."

Eight or nine months later, the selling firm again entered upon the business of selling furniture and undertaker's supplies in the same town. Thereupon, plaintiff filed suit to recover damages for violation of the contract and for an injunction restraining the defendants from further conducting the competing enterprise during the life of the contract.

The principal defense interposed by defendants to the suit was that the contract was invalid as being violative of public policy in that it tended to give plaintiff a monopoly of business in his town. The trial judge refused to see matters in this light and gave judgment in plaintiff's favor. But, on defendants appealing to the Kentucky Court of Appeals, that court reversed the judgment, holding that the contract was bad because it was so worded as not only to prevent defendants from going into the furniture and undertaking business at Cadiz, but anywhere in the country. It is to be inferred that if the contract had been so worded as to be limited to that town, it would have been valid. The Court of Appeals said:

"A contract which is against public policy because its terms impose an unreasonable restraint upon trade is void, and hence it is void for all purposes. The ancient rule rendered all contracts in restraint of trade void, whether the restraint was great or limited in its effect, but, according to the well-established doctrine in this state, a contract which is in general restraint of trade or which imposes restraints which are unreasonable is void, but an agreement, in partial restraint of trade ancillary to the sale of a business and which is reasonable in other respects, is not void but enforceable, if the agreement has two indispensable conditions, one of which is that the party selling the business must not be prevented by the contract from engaging in the business at all, and the other is that the restriction will not deprive the country of the benefits following his conduct of such a business. Hence agreements, which are ancillary to the sale of a business and which prohibit the vendor from engaging in the business, at a particular place or for a designated time, or with particular persons, are valid and enforceable, if the restrictions are reasonable. The restrictions upon engaging in a business in such instances are reasonable and will be enforced, if the restriction is no more extensive than is reasonably required to protect the vendee of the business, in whose favor the restraint is given, from the competition of the vendor of the business, and the restraint is not so extensive as to affect the interest of the public.

"The contract asked to be enforced in this action, conceding that it is ancillary to the sale of a business, and the time within which the restraint is imposed upon appellants not to engage in a similar business so long as appellee is engaged in such business, either alone or in connection with others in Cadiz, is not unreasonable as to the time of the restraint, if the restraint should apply within certain limits only, but the contract, according to its plain terms, restrains them from engaging in such a business anywhere while appellee is conducting or interested in such a business in Cadiz. It thus appears that the appellants are deprived of the right to engage in such a business at all, at any place, while appellee is engaged in such a business in Cadiz, and the country is deprived of any benefits which might arise from their conducting such a business at any place. Such a restraint is unreasonable in a contract with reference to such a business, according to all of the authorities."

SECTION 29 RIGHT TO ACT AS EMPLOYEE OR MANAGER

When a funeral establishment is sold under an agreement that the seller is not to re-establish the same line of business in competition with the buyer, it may become an important matter whether the contract is so drawn as merely to preclude the seller from re-engaging in business on his own account, or whether it is broad enough to cover his becoming manager or employee for a competitor of his successor. The point was involved in a very practical way in the case of *Harris v Irby*, 225 Southwestern Reporter, 635, decided by the Arkansas Supreme Court.

Defendant had been engaged in funeral directing, but had sold his establishment and equipment to plaintiffs. The contract of sale contained the following clause:

"Party of the first part [the seller] agrees as a further consideration that he will not enter into said undertaking business in the city of Rector for the period of one year from the date hereof, unless parties of the second part have discontinued said business."

About four months after the contract was made and the sale consummated a new undertaking business was established in Rector, and was operated by defendant. Plaintiffs sued to recover damages on the ground that there was a breach of the agreement. Defendant denied that he was the proprietor of the new place, claiming that his brother was the owner, and that he was merely an employee. The trial court sustained this defense, and the Arkansas Supreme Court affirmed the decision, saying:

"The testimony established the fact that the new business operated by the defendant was carried on with a sign over the door reading, 'Irby, Undertaker,' but that the business was advertised in a local newspaper as being the business of W. F. Irby, defendant's brother. The testimony tends to show that at that time W. F. Irby was a farmer and a school teacher, living away from Rector, and that the management of the business was entirely in the hands of the defendant, that the defendant gave his personal attention to the business, was in attendance at the place of business, purchased the stock and material, attended to sales and to the burial of the dead, and assisted in embalming the dead, that he made collections and drew checks in payment of bills.

"Defendant testified himself that he was not interested in the business, but was employed by his brother at a salary of \$100 per month, and that he looked after the business under his brother's direction, and frequently consulted the latter. He testified also that the goods were purchased and shipped in his brother's name, and that the business was carried on in his brother's name.

"The facts of this case fall within the rules of law announced by the court in the case of *Daniels v. Brodie*, 54 Ark. 216, 15 S. W. 467, 11 L. R. A. 81, as follows:

"If the defendant was the sole or a joint proprietor in such business, he would be liable to the extent of the loss occasioned to the plaintiff by that business, but if he was not such proprietor, only caused it to be believed that he was, the plaintiff's damage would cover only the loss to him occasioned by that belief, and would not include any loss caused by the competing business, independent of that belief."

"It is insisted now that according to the undisputed evidence the relationship of the defendant to the new business was such as to induce in the minds of the public the belief that he was the proprietor, and that the court erred in refusing to give the peremptory instruction. There was certainly an issue of fact for the determination of the jury as to whether or not the defendant was the proprietor of the business. That issue was properly submitted to the jury, and the verdict is conclusive as to that.

"We deem it unnecessary to determine whether or not, according to the undisputed testimony, defendant held himself out as the proprietor, for the reason that no damages have been proved on that issue. Plaintiffs directed the whole of the proof in the effort to show damages from the competing business itself, and there is no proof that damages resulted independently of the competing business on account of the belief in the minds of the public that defendant was interested as proprietor."

Had the contract in the Arkansas case provided that the seller would not, "directly or indirectly, for himself or as manager or employee of another, nor in any other manner," engage in the undertaking business, etc., it would seem that plaintiff would have been entitled to an injunction.

CHAPTER IX

RIGHTS AS TO TRADE-NAMES AND TRADE-MARKS

SECTION 30 RIGHT TO USE OWN NAME IN BUSINESS

The right of one engaging in the funeral business to utilize his surname in the name of his establishment is qualified by a rule of law to the effect that he must not so use it as to prejudice a competitor previously engaged in business by misleading the public to believe that the businesses are identical.

This old principle of law finds new application in the comparatively recent case of *W. R. Speare Co. v. Virginia L. Speare and others*, 265 Federal Reporter, 876, decided by the Court of Appeals for the District of Columbia. The decision of the court reverses a decree entered by a lower court in Washington, D. C.

W. R. Speare Company, a corporation, brought suit against the defendants, in which it asked that they be restrained from using the name "Speare" in their business as funeral directors, or, if denied that relief, that use of the name be qualified in certain particulars, that it be awarded the profits made by the defendants through the use of the name, and also the damages suffered by it in consequence of that use. The trial court ordered dismissal of the suit on the ground that the use of the name was not an unlawful interference with the rights of the plaintiff, that no deception was practiced thereby, and that its use had little, if anything, to do in procuring business for them.

Willis R. Speare, under the name of *W. R. Speare*, operated a funeral establishment in Washington, D. C., from about the year 1872 until he died in 1907; his establishment acquired a reputation for efficiency, and his business became one of the largest of its kind in the District. By his will he transmitted the business, with the good will and reputation thereof, to his brother, Frank A. Speare. Immediately after his death his estate took charge of the business, and continued it until 1915 in the name of *W. R. Speare*, Frank A. Speare, the brother being in charge. In 1915 Frank A. died. Thereupon Virginia L. Speare, widow of Willis R. Speare, announced her intention of immediately taking over the business and conducting it in her own interest, on the assumption, as alleged, that the bequest in favor of Frank A., contained in her husband's will, was not binding upon her.

The sons of Frank A., as administrators of his estate, commenced a suit in the Supreme Court of the District against her and one White, individually and as administrators of the estate of Willis R. Speare to enjoin the action threatened by her. This suit resulted in a decree which found that the plaintiff was entitled to the business conducted by Willis R. Speare at the time of his death, together with the good will thereof, and which restrained her and White—

"From directly or indirectly conducting or participating either as stockholders, partners, or otherwise, in the conduct of the business of undertaker or funeral director under the name of Willis R. Speare, or *W. R. Speare*, or under the name of the estate of Willis R. Speare, *W. R. Speare*, or in any manner such as to lead the public to understand that any such business as may be conducted by them or any of them as aforesaid is the business of the said Willis R. Speare, or *W. R. Speare*, or that they or any of them are conducting the same as his successor or as the successor of the estate of the said *W. R. Speare*."

Soon after this decree was entered, the plaintiff was organized as a corporation by the plaintiffs in that case. It then acquired from the sons of Frank A. and from his estate the business of the Willis R. Speare establishment and the good will thereof, and was the owner of both when the present suit was filed. About the same time the defendant Virginia L. Speare and another opened an undertaking business under the name of *V. L. Speare Company*, and had since conducted the same.

It was asserted by the plaintiff that the use of the name "*V. L. Speare Company*"

by the defendant led the public to understand that the business carried on thereunder was the business established by Willis R. Speare; that the name was adopted by them for the purpose of obtaining the advantage of the reputation and established trade of that business, and for the purpose of deceiving the public, also, that the defendant by placing on the front of the building in which V. L. Speare Company, a corporation, did business, this notice, "No interruption to business during improvements", by advertising, "We have no branches", by causing to be printed in the telephone directory, "V. L. Speare Company, Undertakers", by falsely stating in the same directory that Mrs. W. R. Speare resides at the place of business of the defendant corporation; by conspicuously displaying in V. L. Speare's place of business the picture of Willis R. Speare, had caused the public to believe that the V. L. Speare Company was the successor of Willis R. Speare, and that they have thereby violated the decree.

Disposing of the case in favor of plaintiff, the Court of Appeals said:

"The purpose of the decree referred to above is to enforce the provision of the will of Willis R. Speare bequeathing the business which he had established, with its good will, to his brother, Frank A. Speare, father of Almus R. and Willis B. Speare, doing business under the name of W. R. Speare Company, the appellant, and it must be read in the light of that fact. If Virginia L. Speare or those claiming through her are doing anything calculated to lead the public to believe that the business which they are conducting is a continuation of the business of Willis R. Speare, or is in anywise connected therewith, they must be stopped.

"The building in which Willis R. Speare had conducted his establishment for so many years is owned by Virginia L. Speare, and the business of the appellees [defendants] is carried on therein. On the front of the building they posted the statement, 'No interruption to business during improvements.' A photograph of the building fails to disclose that any improvements were being made at that time. The purpose, then, and we think the effect, of the announcement was to lead the public to think that there was no interruption in the business of Willis R. Speare, and that the appellees were conducting that business as his successors. So it is with the announcement, 'We have no branches.' This might well lead a person, who knew that Willis R. Speare had been conducting his business there, to believe there was no other Speare engaged in the undertaking business, and, consequently, that appellees must be his successor.

"In *Stark Brothers Nurseries, etc., v. Stark* (D. C.) 248 Fed. 154, 159, the announcements were:

"'No connection with any other concern. The William P. Stark Nurseries is not connected or related in any way with any other nursery with similar name.'

"Commenting on this, the court said that these announcements, instead of absolving the defendants from the charge of unwarranted encroachment, 'really invite the public to regard the defendants as the original Starks, and all others of similar name as interlopers in the nursery business in Missouri.'

"Virginia L. Speare has a right to use her own name in the undertaking business, and hence to convey that right to another, but, subject to the limitation, that it must not be used in a manner intending to mislead.

"Applying the doctrine of these cases [decisions cited by the court] to the case at bar, Virginia L. Speare has a right to use her name in business—may, if she wishes, state that she is the widow of W. R. Speare, but these things may be done by her only in such a manner as not to deceive. We do not think the plaintiff has shown any actual damages resulting from the things of which it complains.

"The decree of the lower court is reversed, at the cost of the appellees [defendants], with directions to enter a decree prohibiting the appellees, their agents and employees, from using the word 'Speare' as the name, or part of the name, of their business as undertakers, or in advertisements, telephone directories, signs, or statements of any nature, unless accompanied by the words 'neither the successors of, nor connected with, the original W. R. Speare establishment, in appropriate juxtaposition therewith, and in conspicuous letters, and from making any statement, oral or otherwise, that they or any one of them is continuing the original business formerly done by W. R. Speare under that name at 940 F. street, N. W., and now carried on by the defendants, or that they have any privity or connection by succession, inheritance, or otherwise, with said premises, or that said original business is no longer in existence or is not being continued by the plaintiff herein."

See, also, a decision of the Louisiana Supreme Court on conflicting use of a surname by competing funeral directors (85 Southern Reporter, 906)

SECTION 31. MISUSE OF ASSOCIATION INSIGNIA

A reader of The Embalmers' Monthly raised a question as to what legal recourse there is against a man who makes unauthorized use of the insignia of an association of funeral directors

We were strongly of the opinion that the association would be entitled to maintain suit to enjoin misuse of its chosen badge on the ground of unfair competition

It is well settled that where a name or mark is chosen to identify the business of an individual or an association of individuals, the courts will enjoin an outsider from misleading the public to believe that he is identified with the business. For example, the Federal courts have upheld the right of Minnesota millers to enjoin an Eastern miller from putting an inferior flour on the market under the name of "Minnesota Patent". The policy of the law on this point is still better shown by the following statute which is in force in Illinois and several other states:

"Whenever any person or an association or union of workingmen has heretofore adopted or used, or shall hereafter adopt or use any label, trade-mark, term, design, device or form of advertisement for the purpose of designating, making known, or distinguishing any goods, wares, merchandise or other product of labor as having been made, manufactured, produced, prepared, packed, or put on sale by such person or association or union of workingmen, or by a member or members of such association or union, it shall be unlawful to counterfeit or imitate such label, trade-mark, term, design, device or form of advertisement, or to use, sell or offer for sale, or in any way utter or circulate any counterfeit or imitation of any such label, trade mark, term, design or form of advertisement"

CHAPTER X

UNLAWFUL INTERFERENCE IN SELECTING FUNERAL DIRECTORS

SECTION 32 IN GENERAL

"Death puts an end to rivalry and competition," said Hazlitt, the famous English writer. But that he meant rivalry and competition with decedents is shown by his adding, "The dead can boast of no advantage over us, nor can we triumph over them."

To the public disgrace, death too often sets rivalry and competition in motion. The term "ambulance chaser" is justly one of reproach against the unethical attorney who vies with others of his kind to see who can win a fee from the weeping widow. But that legal shysters have not monopolized the matter of competition at the deathbed is shown by a tendency of some funeral directors to force their services upon those charged with the sacred right and duty of burying their dead. This practice is indicated in the following query received by Embalmers' Monthly from a western subscriber who wrote:

"Will your legal department please advise me if any private hospital conducted for the treatment of anyone who wishes to come for treatment or has the price can dictate what undertaker they shall have, and forbid the family present from calling the undertaker of their choice, or can the hospital forbid any licensed embalmer from coming into his place for a corpse if nearest relatives call?"

Numerous instances might be referred to in which hospital authorities, clerks, doctors and nurses have acted as "runners" for favored funeral establishments, using various means to dissuade surviving relatives from exercising their right to choose their own funeral director, or even absolutely refusing to surrender bodies to such funeral directors.

Obviously, the favored persons' effort to monopolize patronage flowing through a hospital is back of this practice. It is our province to comment upon the legal aspects of this species of competition, and not upon the unethical, unprofessional or unbrotherly phases, excepting as they have a legal bearing on the subject.

Although we are unable to find any instance in which an appellate court has been called upon to determine the precise question presented, application of certain well established legal principles lead to the following conclusions:

There is nothing to prevent hospital authorities and attaches from *recommending* employment of a particular funeral director, but it is a legal wrong, against surviving relatives and the funeral director of their choice, to *interfere* with the latter's taking charge of the remains for the purposes of burial.

The decision of the Appellate Court of Illinois in the case of *People v. Julia F. Burnham Hospital*, 71 Illinois Appellate Court Reports, 246, has strong bearing on the subject. There it was decided that the authorities of a hospital may "adopt any regulation for the government of the hospital which is *reasonable and consistent with the general purposes of the corporation.*" Inferentially, it is to be understood from the decision that a regulation that is unreasonable and not consistent with the general purposes of the hospital is not valid.

In that case it was decided that the hospital was entitled to exclude any physician from practicing in the institution if he should not conform to the code of ethics of certain medical societies, and that it was proper to exclude a certain physician who was guilty of "flagrant disregard of the standards of professional conduct adopted by the association and societies of the learned and honorable profession of which he was a member, and acts regarded by the great body of physicians and surgeons as unprofessional and discreditable, if not disreputable." The court added:

"The directors were confronted with the question whether the sick and afflicted in their care, or who should come to the institution for relief, should have the benefit of the attention, experience, skill and learning of the great body of physicians and surgeons, or be committed wholly to the hands of the appellant. The hospital had its

existence for the purposes of extending relief to the sick and afflicted and of relieving their pain and suffering . . . Under the by-law the appellant, in order to obtain admission to the hospital as a physician, had but to abandon practices which the common judgment of his professional brethren branded as discreditable, and which are so commonly resorted to by quacks and charlatans"

Now, if a hospital cannot exclude a reputable physician from obtaining admission to the institution to treat his patients, for stronger reasons a reputable funeral director cannot be excluded. Plainly, the hospital authorities have a greater right to control the matter of treatment of patients than they have to control the matter of burial of patients whose death has terminated the purpose for which the patient's life has been received.

Should a particular embalmer or funeral director possess a reputation for grossly improper handling of bodies or of customarily disturbing the quiet or order of the hospital to the annoyance of the hospital authorities or patients in the institution, there would seem to be no doubt but that the authorities might forbid his admission to the hospital. But, plainly, they have no right to exclude a particular member of the undertaking profession for the purpose of giving a competitor a monopoly of the burial of patients dying in the institution.

There is no law better settled than that the next of kin of a deceased person is entitled to the possession of a deceased person's remains for the purpose of decent interment, and that any interference with this right is an actionable wrong. One of the leading court decisions on this subject was handed down by the New York Court of Appeals in the case of *Darcy v. Presbyterian Hospital*, 202 New York Reports, 259, wherein it was decided that if immediately after the decease of her son, plaintiff, as his nearest surviving next of kin, demanded his body of the hospital, sending a funeral director, and if the hospital refused to deliver it until performance of an autopsy, to which plaintiff refused her assent, the hospital was liable in damages, assuming that the death did not occur under circumstances making a coroner's case.

In that case, the liability was based on a mutilation of the body, as well as detention, but the opinion of the court, which contains extended reference to other similar cases, plainly shows that refusal to surrender the body on demand was unlawful.

And, in the case of *O'Donnell v. Slack*, 123 California Reports, 285, the California Supreme Court said:

"The duty of the burial of the dead is made an express legal obligation, but, aside from the obligation, *there is a right, well-defined and universally recognized, that in disposing of the body of deceased the last sad offices belong to the next of kin*, within which phrase, as here employed, is included the surviving husband or wife. This right had its origin in affection for the dead, in religious belief in some form of future life.

But, while this having its origin in affection and religious sentiment, it soon came to be recognized as a strictly legal right, and the next of kin, while not in the full proprietary sense 'owning' the body of the deceased, have property right in the body which will be protected, and for violation of which they are entitled to indemnification. *Thus if the right is interfered with, damages will be awarded* . . . Therefore, in a case such as this neither the court in probate nor the personal representative has any right to the body of the deceased, nor any right to control the manner of disposing of the remains, nor to dictate the place of interment."

If a probate court or personal representative of the estate has no right to dictate to the next of kin how or where decedent's body shall be interred, it must follow that a hospital can have no right to dictate who shall make the interment. Patients entrust their living, and not their dead, bodies to the control of hospitals. If a hospital could dictate who is to carry a body away from its premises, then it could say that a discharged patient shall not be permitted to leave its wall except by taking a yellow taxi.

In view of the law above mentioned, we are of the opinion that when a patient is admitted to a hospital, the hospital authorities are bound to surrender his body, in the case of his death, to any funeral director selected by the next of kin, unless, perhaps, the selected director's practices are in some way violative of the good order of the hospital. By reason of the general practice of employing funeral directors to take charge of the embalming and movement of bodies from the death chamber to the grave, there is an implied understanding between hospital authorities and the next of kin of persons dying in such an institution that a funeral director chosen by surviving relatives shall be permitted to enter the hospital for that purpose.

We are clearly of the opinion that when hospital authorities wrongfully refuse to surrender possession of a body in an instance of this kind the surviving relatives, or the funeral director employed by them, is entitled to maintain legal proceedings to secure custody of the body for burial.

And, in our judgment, the funeral director discriminated against by an agreement be-

tween hospital authorities and a favored funeral director or set of funeral directors has additional legal remedies

Most of the states have an anti-trust law similar to that in force in Illinois, making it unlawful for persons, firms or corporations to enter into combinations for the purpose of limiting competition in the sale of goods. Under such statutes, we believe that a funeral director injured by an agreement between his competitors on one side and of hospital authorities on the other, whereby it is contemplated that measures will be taken to restrain the exercise of surviving relatives' right to choose the funeral director from whom necessary funeral supplies are to be purchased, would be justified in complaining to the prosecuting authorities with a view to institution of prosecution under the anti-trust law, as well as in suing for damages for invasion of his legal rights

And, apart from the anti-trust law, there is good ground for taking the view that an agreement between a funeral director and a hospital that relatives shall be refused permission to remove their dead unless they employ such a funeral director amounts to an unlawful and actionable conspiracy to injure competing funeral directors in their business

By what we have said it is not intended to be intimated that hospital authorities may not *recommend* the employment of a given funeral director, although the next of kin may have indicated a desire to employ someone else, but only that there is no right to *coerce* the surviving relatives into the selection of the hospital's favored funeral director.

In closing, we draw attention to one more legal aspect of cases of this kind. Should any person, for the purpose of dissuading another from employing a certain funeral director, make false statements as to his reputation or qualifications, there would be a plain case of libel or slander, according to whether the statement be made orally or in writing. As said in a recent decision of the Iowa Supreme Court in a case in which the right to recover for defamation of one undertaker by another was upheld: "The general rule is that when language is published concerning a person or his affairs, which from its nature must, or presumably will, as its natural and proximate consequence, occasion him pecuniary loss, its publication is libelous in itself"

Arizona's Legislature in 1921 set a worthy example for the legislatures of other states, by enacting a law which makes it punishable offense for one in charge of a hospital to deliver a body to a funeral director other than the one designated by the family, relative or friend of the decedent, if family, etc., be known. It is the duty of the hospital superintendent, etc., to notify persons known to be interested when death occurs and to prevent removal of the body until opportunity is afforded for designating a funeral director

"Will you advise me on the following subject," wrote a funeral director to *Embalmers' Monthly* legal department

"One day last week a woman and her son came into my office and told me her husband had died, and wanted me to take charge of the body. I took over my embalming board and laid him out ready to embalm, but in the meantime she notified the lodge members of his death and they came down with another undertaker, and he ordered me out, and also threw my goods out and damaged them. Now, the family of the deceased did not want this other undertaker and told him so; they wanted me, for they had called me in the first place, and even selected the casket from me. But the lodge members overruled the woman, and the other undertaker took charge of the body.

"Now, what I want to know is what can I do about this matter? Can I sue him, civilly or criminally? The family is with me."

The following opinion was given:

"You have several possible causes of action. First, you can recover against the other undertaker damages done to your property by his throwing it out. To your actual damage, a jury would be warranted in adding punitive or exemplary damages—a sort of penalty allowed by the law for malicious or aggravated wrongs deliberately committed

"Then you are entitled to damages against him for wrongful interference with your performance of a valid contract already made with the widow. Anyone who induces another to break an existing contract is liable in damages. Here again I am of the opinion that exemplary damages could be added to the actual damages, because of the deliberate and malicious interference. Your actual damages under this head would be the loss of profits resulting from your being prevented from carrying out the contract.

"In a suit against the undertaker to recover the damages above mentioned, it would be proper to join as defendants every one of the lodge members who took an active

part in forcing him in your stead. They are liable because they aided in the perpetration of the wrong against you.

"If the other undertaker or any one of the lodge members laid their hands upon you under threat to expel you from the house, they are liable in damages for the assault, and would also be subject to prosecution for the assault.

"Technically, the widow would be liable to you for your loss of profits in the transaction if she finally consented that the lodge's undertaker go ahead with the funeral arrangements, in your place. That would amount to a breach of contract with you. But as the family appears to be friendly and favorable to you, I would make no claim against them, enforcing the claim, instead, against the undertaker and the interfering lodge members.

"The opinion thus far expressed proceeds upon an assumption that the deceased man left no will or direction taking away from the widow the right to say who should conduct the funeral, and it is not likely that there was any such provision in the will.

"The law is that a person during his lifetime may by will or contract control his own funeral arrangements. But where he does not exercise this right (and it is very seldom exercised) the law casts upon the wife the right and duty of providing for her husband's burial. In such case the fact that he may be a member of a lodge which confers funeral benefits gives that lodge no right to supersede the widow. She may accept or reject the benefits as she pleases.

"Therefore, the lodge members exceeded both their legal rights and common decency if they persisted in dictating the funeral arrangements beyond the point that was agreeable to the family, assuming that the deceased had not exclusively authorized them to attend to all such arrangements. Had the family not finally yielded to the lodge's control of matters, and there had been forcible interference by the other undertaker and the lodge in carrying out the funeral, the members of the family would have had a valid cause of action for damages against the offenders. But as the family seems to have finally yielded to the insistence of the lodge's representatives, there is no cause of action in favor of the surviving wife and other bereaved relatives. Yet this fact does not prevent your right to damages for invasion of your rights, as above stated.

"As these unseemly disputes occasionally arise at the deathbed, it is worthy of remembrance by every undertaker and funeral director that his right to take charge of funeral arrangements depends upon agreement with the person who has the primary right to control the burial. The surviving wife or husband has the first right, where the deceased has not left directions covering the matter. Other relatives, and much less outsiders, have no right to make binding arrangements for the funeral in conflict with those made by the widow. Exceptions to this rule arise only in rare cases where husband and wife are living apart, and the survivor by unreasonable delay in making burial arrangements or some other act disqualifies himself or herself from interfering with arrangements made by some more interested person, especially where such arrangements were apparently agreeable to deceased.

"For the reasons stated, I do not doubt but that you have a valid claim for damages against the other undertaker and those lodge members who actively interfered with you at the house.

"It is probable that at a trial, the defendants would rely on the fact that the widow telephoned the lodge, and that they would claim that this manifested a desire on her part that they take charge of the arrangements. But defendants could not get far with a defense of this kind, for it is plain that she merely invited them to participate in the funeral to the extent that she had not made contrary arrangements. At least when the representatives of the lodge arrived at the house they discovered that she did not desire them to attend to the employment of an undertaker, and if you have fully stated all the circumstances affecting the case they were guilty of most unwarranted and unfeeling conduct both toward you and the bereaved relatives."

The other funeral director does not seem to have ever heard of Section 5 of the Code of Ethics, which see in another chapter.

CHAPTER XI

PURCHASE OF SUPPLIES, ETC.

SECTION 33 RIGHT TO CANCEL PURCHASE OF GOODS

An industrial disaster caused a Western funeral director to place an order with a casket company for a good sized lot of caskets. His wife, acting without authority from him, ordered a large number of burial suits from the same company. Without opening them the funeral director returned the suits to the company, paying all transportation charges. The company refused to accept the return as in cancellation of the contract, and question arose as to the rights of the funeral director.

It seems quite clear, on the facts stated, that the question of liability turns solely on the nature of authority, if any, which the funeral director had conferred on his wife in relation to the business. If the wife had apparent, although not actual, authority to place the order, the funeral director is bound. If there was a valid order, the contract was so far executed that there was no right to cancel it without the consent of the casket company.

The mere fact that the funeral director's wife placed the order in his name does not bind him any more than if it had been placed by an absolute stranger. A wife has no implied power as such to bind her husband by contracts made in his name without authority.

But where the wife is permitted to exercise general powers in the matter of placing orders, etc., third persons and concerns are entitled to rely upon the apparent authority conferred upon her, the same as where the funeral director places a salaried employe in charge of his place of business. In short, where a funeral director places his wife or anyone else in a position where they have apparent authority to make purchases, he becomes bound by all purchases fairly within the scope of the business.

It is not disclosed just how far this funeral director had permitted his wife to place orders, and therefore it is impossible to express a definite opinion concerning his liability. If she merely did clerical work for him and was required to secure his assent to the placing of orders, and if this order was placed without his authority, he might escape liability. But if he had permitted her to use her own judgment concerning the nature and quantity of goods to be ordered, he is probably bound.

And even if she had neither actual nor implied authority to place the order, if he knew that it was placed and did not take reasonably prompt steps to have the order cancelled he would be bound on the theory of ratification of her unauthorized act.

Should it appear that there was no authority, express or implied, for placing the order, and that it was not ratified, the funeral director would not be liable. But the wife would be personally liable to the casket company for the loss entailed by the company through her wrongful assumption of authority. Therefore, it appears that the graceful and equitable thing to do is for the funeral director to receive and pay for the goods, unless he can reach a satisfactory adjustment whereby the company will keep the goods and he will reimburse the company for its loss of profit.

SECTION 34 RIGHT TO RECOVER DOWN PAYMENT

An interesting decision has been handed down by the Massachusetts Supreme Judicial Court in a case involving the right of a contract buyer to recover a down payment where an order for a motor hearse was cancelled because of failure of the seller to deliver within a specified time. (121 Northeastern Reporter, 21.)

Plaintiffs placed a written order with defendant for the hearse, the contract containing this clause: "A payment of two hundred and fifty dollars accompanies this order, which is to be returned only if the order is not accepted."

It seems that plaintiffs cancelled the order after its acceptance by defendant, because delivery was not made within the agreed time, and defendant refused to repay the \$250, claiming that the only condition on which the money was returnable—refusal of the defendant to accept the order—had not arisen; in fact, that the order had been accepted.

But the court holds that plaintiffs, having lived up to their part of the contract, were entitled to return of the \$250 on an excusable termination of the contract for failure of the defendant to make timely delivery

SECTION 35. WHO BEARS FREIGHT CHARGES

A decision handed down by the Georgia Court of Appeals in the case of Gate City Coffin Company v Paulk, 106 Southeastern Reporter, 556, makes an application to the undertaking business of a fundamental principle of sales law applicable to commercial transactions generally

The plaintiff sold to the defendant some undertaker's supplies, and the defendant paid the bill, excepting \$8.81, which represented freight charges on the shipment. The courts were later called upon to determine whether or not the contract of the parties imposed liability on defendant buyer to pay the freight charges. The controversy was decided in plaintiff's favor, although the circumstances evidenced good faith on defendant's part in resisting payment. The court's decision is in line with what the courts generally hold.

The invoice covering the supplies referred to "attached terms," and the term sheet referred to contained the following provisions:

"Kindly note our terms. If you discount the inclosed invoice: (1) Deduct such part of the freight as the invoice allows. (2) Do not deduct that part of your freight bill that is added for war tax. The government expects you to pay your part of the war, and if it is deducted from our bill the settlement will be returned to you. (3) After deducting the freight, then take off 2 per cent for cash discount if you pay within 30 days from the date of invoice. (4) Return to us your paid freight bill with your remittance."

The invoice allowed no deduction for freight.

The trial judge thought the term sheet and the invoice were ambiguous as to freight charges. But, on appeal, the Court of Appeals held otherwise, saying:

"We cannot agree with him that the contract was ambiguous. The invoice expressly refers to the term sheet for the terms, and this term sheet specifically says, in the very first paragraph, that only such part of the freight should be deducted from the bill as the invoice allows, and by reference to the invoice it will be seen that no freight whatever is allowed. It follows, therefore, necessarily that the purchaser was to pay the freight. We conclude that in holding that the contract was ambiguous, and in referring its proper construction to the jury, the court committed an error, as in our opinion the express terms of the contract demanded a verdict for the plaintiff."

In passing, however, it is not to be inferred that the terms of an invoice necessarily, or even ordinarily, fixes the liability for freight charges, as between buyer and seller. If there has been an order or contract signed antedating the invoice, that will control over the terms of the invoice. In other words, when a contract of sale has been made, the rights of the parties will not be changed by terms stated in the invoice, unless those terms conform to the contract or are assented to by the buyer.

In the Georgia case, however, the parties appear to have agreed that the true contract was stated in the invoice and the attached term sheet.

Whether the transaction be viewed in the light of a contract silent in its terms as to who should pay the freight, or as fixing liability for the freight by the terms of the invoice and term sheet, it seems that the decision of the Court of Appeals is sound.

Goods are supposed to be "delivered" by the seller to the buyer at the place where the goods are at the time the contract of sale is made, except as there happens to be mutual understanding to the contrary. This is a fundamental principle of the law of sales.

By almost universal custom, however, it is understood that where a retail merchant living in one city, gives an order to a manufacturer or retail dealer living in another city, the buyer is not bound to send some one to the seller's place of business to get the goods and ship them. On the contrary, universal custom imposes on the seller the duty to see that the goods are properly packed and shipped to the purchaser.

But when the seller has properly shipped the goods, billing them to the buyer, it is presumed that delivery has been made to the buyer, in the absence of agreement to the contrary. In other words, the railway company is treated as the agent of the buyer for the purpose of transporting the goods. There is a constructive delivery to the buyer and he must bear the expense of transportation and the risk of loss in transit, so far as the seller is concerned, that is where the shipment is made to the buyer and nothing has been said as to who should pay the freight, or where delivery was to be made.

If the buyer intends to insist on the seller paying the freight he should either have the order or contract read "delivered f. o. b. Jonesville" (destinatio.), or "freight al-

lowed to Jonesville," or something else showing a mutual understanding that the seller is to pay the freight

SECTION 36. DEALINGS WITH TRAVELING SALESMEN

Subject to the qualifications stated below, it is fairly well settled law that the only authority which a traveling salesman has is to receive orders to be transmitted to his employer. Contrary to what many may suppose, he has no implied power, by the mere fact of his employment, to make a binding contract to sell goods. In special instances the traveler's authority may be enlarged by special instructions or by his employer's customary approval of his dealings with customers, but every buyer from a commercial salesman is bound to ascertain at his own peril the scope of the salesman's authority.

Hence, while a traveling salesman would have implied authority from his house to solicit an order for goods dealt in by his house, he could not bind the house by an absolute contract of sale so as to subject his employer to liability in damages on failing to fill the order. But, of course, an unauthorized contract made by him would become binding on his house failing to repudiate it promptly on being advised as to its making. And such a contract is ratified as a whole if ratified in part, for it is law that an employer cannot ratify a representative's unauthorized act so far as it is beneficial and repudiate the rest of it.

Since an order for goods given by a customer to a salesman is in effect a mere offer to buy on the terms stated in the order, it follows that no binding contract for the sale is made until the order has been received by the wholesale house and has been accepted. The acceptance which will turn the order into an agreement on the part of the customer to buy, and on the part of the wholesale house to sell, although usually indicated by a written acceptance, may be established by any conduct on the part of the house manifesting a purpose to accept it, as by making shipment or by asking shipping instructions.

Apart from express authority or custom, the traveler has no authority to collect for goods ordered nor amounts due on old accounts. Cases have occasionally arisen where a salesman has made large collections and then absconded. The right of his employer to recover the amounts again from the customers is declared by the courts to rest upon custom or express instructions. If it appears that the collections were authorized, the employer must bear the loss; otherwise it falls on the customer. By the great weight of judicial authority it is held that, where a salesman is entrusted with the goods sold, he has implied authority to collect for them, and that payment to him is payment to his employer. But where he is merely employed to solicit orders there is no such authority by the mere fact of his employment. It is held, however, that this question may be affected by general trade custom as well as by previous dealings between the parties. So if in given territory there is a custom to make payments to traveling representatives, so general that it must be known to a certain wholesale house, that house will be bound by payments made to salesmen, unless customers have been notified that the salesman was not so authorized in the particular instance. And, as may be supposed, a house which has received payments through its salesman, without repudiating his authority to collect, cannot afterwards assert his want of power to make a subsequent collection, unless notice to the contrary has been properly given.

Notice that payments must be made by remittance directly to the house may be printed on letter heads, invoices, etc., but there are several decisions to the effect that a customer is not necessarily chargeable with such notice if it was printed in small type and escaped his attention without carelessness on his part.

A traveling salesman has no implied power to sell his samples, nor to indorse the name of his employer on checks received on account.

There is a commonly entertained misconception concerning the legal authority of a salesman to bind his employer by the making of warranties of quality, etc., of articles for which orders are taken. It is probably generally assumed that whatever the salesman may say to induce a customer to buy is just as binding upon the seller as if he had made the representation personally instead of through an agent.

But the Appellate Term of the New York Supreme Court in disposing of the case of *Eichler v. Kahnweiler*, 178 New York Supplement, 257, shows that a salesman's warranty is binding on his employer only when it has been expressly or impliedly authorized or when its making has been ratified.

Where it is not shown that the salesman has been directly authorized to make a representation or warranty, it is held by the court that it must appear that "such authority can be implied from the fact that it is customary for agents to give a warranty on sales of merchandise of that description."

The New York decision also establishes the point that when a buyer claims that there has been a breach of a warranty made by the seller's salesman, the burden rests

on the buyer to "prove either the express authority or the custom from which the implied authority is presumed." In other words, it is not incumbent on the seller affirmatively to disprove the salesman's authority in the particular regard.

The opinion recognizes that where a dealer accepts the benefits of a contract negotiated by his salesman, knowing that the latter has transcended his authority by making some representation or warranty, the transaction becomes just as binding as if it had been fully authorized. But it is ruled that where no actual knowledge of the making of a warranty has been brought home to a dealer, "the mere delivery of goods and acceptance of part of the purchase price is not sufficient to render him liable for the representations of the salesman."

CHAPTER XII

THE FUNERAL DIRECTOR AS A DEBTOR

SECTION 37. IN GENERAL

"The business of an undertaker is not the business of a merchant or trader. It would come nearer being a profession than a trade. An undertaker sells nothing except his skill in preparing dead bodies for burial and attending their interment." So remarked the Mississippi Supreme Court in the late case of *Sayers & Scovill v Doak*, 89 Southern Reporter, 917.

The court holds that the Mississippi "business sign statute"—which provides, among other things that if a person shall transact business as a trader or otherwise, and fail to disclose the true owner of the business by a sign in letters easily to be read, to be placed conspicuously at the place where the business is carried on, all property, etc., acquired in connection with the business shall be treated, as to creditors, as his property—applies only to traders and merchants and persons of the same general character as traders and merchants.

It is further held in the same case that where one engaged in the furniture and undertaking business has mortgaged property used in connection therewith—in this case, a motor hearse—the mortgage is enforceable against general creditors claiming under an assignment made by the mortgagor for the benefit of creditors.

The salient parts of the court's opinion are as follows:

"The facts necessary for a proper consideration of the questions involved are as follows: Meaders, the insolvent debtor, bought the funeral car in question from appellant sometime during the year 1920 (the assignment was made on the 12th of March, 1921), and to secure the purchase money for the same executed and delivered to appellant a mortgage on said car, which was acknowledged and filed for record and recorded in the office of the chancery clerk of Grenada county, in which county Meaders carried on his business and had said car located. At the time of the assignment by the insolvent debtor, Meaders, he had paid only one of the purchase-money notes for said car. The cross-petition of appellant avers that Meaders at the time the car in question was bought by him and also at the time of the assignment was engaged in the furniture and undertaking business, under the name and style of J. P. Meaders Furniture Company. The answer of the receiver to appellant's cross-petition states that Meaders, the debtor, was doing business under the name and style of J. P. Meaders Furniture Company and was engaged in selling furniture and buying and selling coffins and burying people and had a regular place of business in the city of Grenada, and that said hearse was acquired and used in said business.

"Two questions arise, the solution of which goes to the root of and settles the whole controversy in this case, making it unnecessary to consider the other questions argued by counsel; and they are: First, whether by virtue of our statute . . . under the facts of this case, the funeral car involved was freed from appellant's mortgage, and subjected to the claims of general creditors, and, if not, second, whether appellant's mortgage, although the funeral car was therein improperly described, and said mortgage was not recordable, is enforceable as a lien against said car in the hands of said receiver.

"The court has held in several cases that this sign statute had no application whatever to any kind of business, except that of merchants and traders and persons *ejusdem generis*.

"It was held in *Smith v Perkins*, 112 Miss, 870, 73 South 797, under chapter 90, Laws of 1916, requiring each dealer in coffins, if an undertaker, to pay a privilege license of \$100, but providing that a merchant carrying coffins in stock and paying a privilege tax on the stock shall pay a tax of \$5 in addition to the tax required of him as a merchant, that where the merchant carries a stock of coffins in addition to his other stock and takes charge of dead bodies and prepares them for burial, he cannot

escape the \$100 privilege tax required by an undertaker. The court said that the business of an undertaker was a distinct profession, that the undertaker took charge of the corpse and prepared it for burial and attended to its interment, which was an entirely separate and different business from that of a merchant dealing in coffins . . .

"The business of an undertaker is not the business of a merchant or trader. It would come nearer being a profession than a trade. An undertaker sells nothing except his skill in preparing dead bodies for burial and attending their interment.

"It may be conceded for the purpose of this decision that the mortgage in question is void because the hearse was not properly described therein, and, furthermore, that it was not entitled to be recorded because not properly acknowledged, and for the further reason that the acknowledgment was not properly attested by the notary public taking it, and still it was an equitable lien on the hearse because the law is that where an abortive attempt has been made to give a mortgage, still it will be given the effect and operation of a mortgage in equity, and, like other equities, it is maintainable, not only against the grantor in such mortgage, but is against all others, except innocent purchasers for value without notice. The applicable principle is that equity considers that done which ought to be done. . . .

"The receiver here stands in the same attitude as the debtor, Meaders, with reference to this mortgage. Meaders could not contest it on any of the grounds mentioned. The receiver is a mere volunteer, with no greater rights than the debtor. He cannot claim any rights as an innocent purchaser for value without notice. The appellant has the same right exactly to enforce its mortgage against the car in question in the hands of the receiver that it had while in the hands of Meaders, the insolvent debtor . . . The receiver took the funeral car with this mortgage on it whether he knew it or not and whether he had constructive notice by record or not."

SECTION 38. VALIDITY OF COMPROMISE AGREEMENT

The Arkansas Supreme Court was called upon to determine the right of a bank to proceed to levy upon a funeral director's stock, which he had transferred to his wife, as a means of satisfying a claim of the bank against him (205 Southwestern Reporter, 808)

The funeral director was insolvent and the bank was his largest creditor. The bank aided the funeral director in settling his other debts at fifty cents on the dollar, but it later became a matter in dispute whether the bank agreed to accept less than the full amount due it. The bank issued a receipt stating that the funeral director had paid \$2,250—half the amount of his indebtedness—in full satisfaction of the bank's claim, but it appeared that a mistake was made in crediting the funeral director on the settlement, that \$225 was due from him to complete the agreed settlement, and that he refused to correct the mistake or make the payment.

Under these circumstances, the court held that the compromise agreement became unenforceable and did not preclude the bank from collecting the full amount actually due from the funeral director. By refusing to abide the compromise agreement he upset the settlement.

The court further decided that a conveyance of the undertaking business by the indebted owner to his wife was void as against the bank's claim, it appearing that there was no compliance with the laws of the state requiring creditors to be notified before a stock of goods is sold in bulk. But it was decided that the bank could not hold all the goods transferred to the wife; that the bank was merely entitled to hold a percentage of the value of the goods based on the proportion its claim bore to the entire indebtedness of the undertaker.

SECTION 39. EXEMPTION RIGHTS

In most of the states there are in force statutes designed to enable insolvent debtors, and particularly those who are heads of families, to claim as exempt from seizure to satisfy their debts articles reasonably necessary to enable carrying on their profession or occupation—that is, their trade tools and fixtures to limited value.

That funeral directors fall within the spirit of these beneficent laws is shown by court decisions.

In one of the cases—*Steiner v. Marshall*, 140 Fed. Rep. 710—it appeared that Marshall, a funeral director, became a voluntary bankrupt, and thereby entitled to the exemptions provided by the laws of his state, Maryland. Those laws created an exemption covering "all tools or other mechanical instruments or appliances moved or worked by hand or foot, necessary to the practice of any trade or profession," etc. Marshall claimed the following mentioned articles, which had been appraised at less than \$500.

"Embalming satchel, and instruments, other small tools, engraving machine, embalm-

ing boards, couch, canopy, six rugs, two pairs of black cloth pedestals, one pair of white pedestals, one pair of brass pedestals, three pair of wooden pedestals, one candelabrum, four door crape, one transfer case, four ice boxes, one church truck, two black catafalques, one white catafalque, one undertakers' wagon, one undertakers' Dayton wagon."

The United States district judge having jurisdiction of the bankruptcy proceeding allowed the claimed exemptions, excepting as to the Dayton wagon. The trustee in bankruptcy appealed, but the Circuit Court of Appeals, Fourth Circuit, affirmed the ruling of the judge, saying:

"The articles ordered by the District Court to be delivered to the bankrupt as exempt under this section of the General Laws of Maryland, of which counsel say there is no construction by the Court of Appeals of that state, are appraised at considerably less than \$500; and, though we have not been favored with an authority, it is agreed by counsel undertaking, under the laws of Maryland, is a profession. The district judge by his order, after hearing the testimony, concluded in the language of the statute that the articles named in the schedule as exempt were necessary to the practice of the bankrupt's profession and 'used in the practice thereof'. It seems to have clearly the intention of the Legislature of Maryland, in passing the section in question, to exempt such personal property, and we see no reason to differ in the conclusion reached by the district judge. This court was treated to a learned discussion as to the construction placed upon different statutes and the definition of terms used in such statutes, but it is not deemed necessary to go into these matters, as the statute clearly means that articles necessary to the practice of any trade or profession, and used in the practice thereof, shall be exempt from execution. The expression 'moved or worked by hand or foot,' does not seem to be entitled to the importance sought to be given it. Those words evidently apply to machinery. The governing idea in the section seems to be that the articles exempted are those necessary to the practice of the trade or profession, not moved by steam, electricity, or other motive power than hand or foot."

A decision throwing light on the right of funeral directors to claim exemption of stock on hand is to be found in the case of *McAbe v. Thompson*, 27 Minn. Rep., 134.

Minnesota, like several other states, has a law which exempts from execution for debt "the tools and instruments of any mechanic, miner, or other person, used and kept for the purpose of carrying on his trade, and, in addition thereto, stock in trade not exceeding \$400 in value." Applying this law in the case above mentioned, the Minnesota Supreme Court decided that the statute was broad enough to include within its benefits persons engaged in any trade or business requiring, to carry it on, the use of tools and implements, and who gain a livelihood, in whole or in part, by such use.

"Besides the tools and implements which every such person may hold as exempt under this statute," proceeded the court, "he is also entitled to hold as, in addition thereto, his 'stock in trade,' within the limits specified as to value. This refers to the stock of materials belonging to the owner of the tools and implements, and which he has provided and holds for the purpose of enabling him to make their use a beneficial or profitable one as a means of support. It includes all the materials got and held for that purpose, in whatever condition or state of preparation for use they may be, so that they are suitable and adapted to the end in view, and to the particular business in which he is engaged."

In the Minnesota case, it appeared that the debtor was engaged in the business of buying unfinished burial caskets, finishing them, and fitting them up for sale and use, the work being done by him personally. The property which the court found to be exempt consisted of several unfinished caskets. The decision says:

"They constituted as much a part of his stock in trade, within the meaning of the statute, liberally construed as it must be, as did the screws, nails, trimmings and lining which were used in completing them."

CHAPTER XIII

BURIAL RIGHTS AND DUTIES

SECTION 40 LEGAL STATUS OF BODIES

The question has been frequently debated before judges as to whether a corpse is property, so far as concerns the right of the surviving next of kin to control its disposition, or to recover damage for any indignity to which it may be subjected. The policy of the law on this point is summed up by the Minnesota Supreme Court in the following language in the case of *Larson v Chase*, 47 Minnesota Reports, 307.

"While it may be true still that a dead body is not property in the common commercial sense of that term, yet in this country it is, so far as we know, universally held that those who are entitled to the possession and custody of it for the purposes of decent burial have certain legal rights to and in it, which the law recognizes and will protect. Indeed, the mere fact that a person has exclusive rights over a body for the purpose of burial leads necessarily to the conclusion that it is his property in the broadest and most general sense of that term, viz., something over which the law accords him exclusive control. But this whole subject is only obscured and confused by discussing the question whether a corpse is property in the ordinary commercial sense, or whether it has any value as an article of traffic. The important fact is that the custodian of it has a legal right to its possession for the purpose of preservation and burial, and that any interference with that right, by mutilating or otherwise disturbing the body, is an actionable wrong."

SECTION 41—RIGHT TO CONTROL BURIAL AND FUNERAL ARRANGEMENTS

The general rule of law is that "upon the death of a married person, the surviving spouse has the paramount right as to the custody of the remains of the deceased and its burial" 17 Corpus Juris, 1139.

But this general rule is subject to reasonable qualifications, as is noted by the legal authority just quoted from:

"There is no universal rule regarding the right of persons to bury the dead, but each case must be considered in equity on its merits. The right of sepulchre is not an absolute one, but must yield when the demands of justice require such subordination. Therefore no matter in whom the right of burial rests, it is in the nature of a sacred trust for the benefit of all who may, from family ties or friendship, have an interest in the remains; and in case of a contention the court should assume an equitable jurisdiction over the subject, somewhat in analogy to the care and custody of infants, and should make such disposition as seems to be best and right under all the circumstances. The duty resting on a person to bury the person deceased carries with it the corresponding right to determine the place of sepulture; but this right must be exercised with a proper observance of what is due to public propriety and to the feelings of relatives, and it may be overruled by other considerations" 17 Corpus Juris, 1138.

The general rule above stated—that giving the husband the paramount right to control the burial of his deceased wife's remains—has been declared in decisions of the highest courts of the following named states: California, Georgia, Illinois, Kentucky, Maine, Maryland, Massachusetts, Minnesota, Missouri, Nebraska, New Jersey, New York, North Carolina, Ohio, Pennsylvania, Rhode Island, Texas and Wisconsin.

But this rule must not be misunderstood as meaning that the mere existence of relationship of husband and wife will necessarily give the surviving spouse a paramount right to control the burial of the remains of the other. If it is unlikely that the decedent desired his or her spouse to have charge of his funeral a court will not permit such control. So a Pennsylvania judge has unquestionably stated good law when he said:

"If a husband and wife should quarrel and separate, if the family relation should be destroyed and the wife should return to her parents and thenceforth become again

a member of their family, and live under their protection and support, and die in these circumstances, no chancellor, it is safe to say, would interfere at the instance of such a husband to prevent the parents from burying their daughter in such place and manner as they might desire" (Fox v Gordon, 16 Philadelphia Reports, 185, 187.)

This is in line with the holding of the Supreme Court of the same state in the case of Pettigrew v. Pettigrew, 207 Pennsylvania Supreme Court Reports, 313, to the effect that the right of the kinsmen to bury may be modified by circumstances of special intimacy or association with deceased (See reference to that case in next section.)

Another case in point is that of Wood v. Butterworth, 65 Washington Reports, 344, in which the Washington Supreme Court decided that—where decedent had made his home for many years in one state and had expressed a wish to be buried in his home city in that state, where his former wife and two children by his second wife were buried, but he died in another state where his second wife was then residing—this wish should be carried out, at the instance of his parents, brothers and sisters, or other next of kin, as against an attempt by the second wife to cause interment to be made in some other place of her selection.

What has been said carries in mind the principal thought as to what the undertaker should do to keep himself free from a possible claim for damages on the ground of having participated in a wrongful disposition of the remains in opposition to the right of the husband or mother to direct the place of burial.

Another practical point concerns the right of the funeral director to recover for his services on the theory of having properly followed the desires of those entitled to designate the place of burial. It would seem that the law on this point is as follows:

If the husband's wishes are disregarded, he would not be personally liable for the funeral expenses, especially if the wife left an estate of her own. In that case the funeral director should look to the estate for pay for his services, supporting his claim, if necessary, by proof that, notwithstanding the husband's opposition, the funeral was conducted in accordance with the deceased's expressed desire, or with the desire of a parent or other person having a superior right, under the peculiar circumstances, to control the burial.

If it is intended to collect from some other person, and not from the decedent's estate, there should be exacted from such person a distinct promise to pay.

The California Supreme Court said, in the case of O'Donnell v. Slack, 123 California Reports, 285:

"The body of one whose estate is in probate unquestionably forms no property of the estate. It is recognized that the individual has a sufficient proprietary interest in his own body after his death to be able to make valid and binding testamentary disposition of it. The court in probate and the personal representative acquire jurisdiction from the last testament to see that its provisions in this regard, as in all others, are duly executed, but where, as in this case, the will is silent, the court in probate has no such power. The duty of the burial of the dead is made an express legal obligation; but, aside from the obligation, there is a right, well defined and universally recognized, that in disposing of the body of deceased the last sad offices belong to the next of kin, within which phrase, as here employed, is included the surviving husband or wife. This right had its origin in affection for the dead, in religious belief in some form of future life. It, therefore, early became a subject of cognizance by the ecclesiastical courts. But, while thus having its origin in affection and religious sentiment, it soon came to be recognized as a strictly legal right, and the next of kin, while not in the full proprietary sense 'owning' the body of the deceased, have property right in the body which will be protected, and for a violation of which they are entitled to indemnification. Thus if the right is interfered with, damages will be awarded. Therefore, in a case such as this neither the court in probate nor the personal representative has any right to the body of the deceased, nor any right to control the manner of disposing of the remains, nor to dictate the place of interment. The proper expenses of such disposition may well be a charge against the estate, but the duty and right of burial are quite different things from the duty and right of auditing and paying the expenses of such burial."

It was decided by an Ohio court that where, in her younger and healthier years, a woman expressed a desire to be buried by the side of her husband, but in later years, after having been an invalid for some time, she frequently expressed a desire to be buried by the side of a daughter who cared for her during much of the time when she was an invalid, the courts should give effect to the wishes last expressed (8 Ohio Com. Pl. 154.)

A widow has no property right in the body of her deceased husband, but a mere privilege to control the place and manner of burial, and is legally charged with performance of that service, but the next of kin have also some rights and duties, and

are not liable to the widow in damages where they bury the body in good faith, believing that the widow has waived her privilege

A widow may waive her privilege to control the place and manner of burial by abandoning her duties in that respect, and where she is indifferent to the disposition of her husband's remains and leaves them to be buried by his father she cannot recover damages from the father.

In an action by a widow against her father-in-law to recover damages for the burial of her husband's body contrary to her wishes, evidence of her unchastity is admissible on the issue of damages.

A widow cannot recover as damages the cost of removing her husband's body from the place where it was buried by his father to the place of her choice before she has actually made such removal

The above paragraphs set forth the gist of the decision of the Texas Court of Civil Appeals in the case of *Foster v Foster*, 220 Southwestern Reporter, 215.

In this case plaintiff was nonsuited in an attempt to recover damages against the father and uncle of her deceased husband on account of their having assumed control of the burial of the husband's remains. At the trial the evidence showed that plaintiff's husband died at his residence at Yantis, Tex., and that the defendants, his father and uncle, arrived early the next morning on being notified of his death. Plaintiff gave testimony tending to show that she had desired the burial to take place at Sulphur Springs, and that she did not want interment to be made at the family burying ground called Black Oak, controlled by defendants. On the other hand, the testimony for defendants tended to show that plaintiff had neglected to make any burial arrangements and that it was only after ascertainment of that fact that defendants made the burial arrangements and caused interment to be made in the Black Oak graveyard. The jury, accepting defendants' version of facts of the case, brought in the verdict in their favor on which the trial judge entered judgment. In affirming this judgment on appeal, the Texas Court of Civil Appeals at Texarkana said in the main part of its opinion:

"The complaint here is, not that the remains were improperly or indecently interred at an unsuitable place, but that they were interred at a distance from Sulphur Springs, thereby depriving the appellant and her children of the opportunity of being present at the burial and of visiting the grave in the future when they felt so inclined. Some of the refused charges assume that a mere violation of the wife's legal right to choose the burial place, however innocently done, creates a cause of action in her favor. This is not our view of the law. The burial of the dead with reasonable promptness is a duty which society has a right to say shall not be neglected. While the surviving spouse has the prior right to designate the place and manner of burial, and is legally charged with the duty of performing that service, the next of kin also have some right and owe some duties under certain conditions. 17 Cor. Juris, p. 1142; 8 Ruling Case Law, p. 691. It would be manifestly unjust to penalize the humane conduct of a parent who, innocent of any evil purpose, buries the dead body of his son in the family burying ground. The appellant had no property right in the body of her husband. The law accords her the privilege of controlling the place and manner of burial in deference to the sentiments which are presumed to attend the relations to claim that privilege when she has abandoned the duties due upon such occasions. Testimony was offered and admitted over the objection of the appellant tending to show that she was unchaste and untruthful. There was other evidence, not objected to, that she and Dr Foster did not live happily together. The jury might have concluded from all the evidence that the appellant was indifferent regarding the disposition of her husband's remains, left them for his father to dispose of, and that she in fact suffered no mental distress by reason of the burial at 'Black Oak'.

"The ruling of the court in admitting evidence as to the reputation of the appellant for chastity is the basis of an assignment of error. It was contended that such testimony was irrelevant and immaterial and was prejudicial to the appellant. The principal damages claimed in her suit were for mental suffering due to being denied the right to have her husband buried at the place of her choice. The existence and extent of such suffering depends upon the presence of the love and affection which usually attends the relations of husband and wife. It is not likely that a wife who has been untrue to her marriage vows would suffer to the same extent as one who had been virtuous and loyal to her husband. We think the testimony was admissible upon the issue of damages.

"Appellant insists that she still has the right to have the body of her husband exhumed and reinterred at Sulphur Springs, and that she is entitled to the cost of such services, which she places at \$250. Conceding that she may still claim such a right and may also demand reimbursement for the expense it would entail, it would

not be proper to grant that relief in this suit. Until the expense has been incurred, she has not been damaged in that respect. She is not entitled to recover the cost of an enterprise which she has never undertaken and may not undertake.

"Complaint is made of the refusal of the court to grant the injunction asked for restraining the defendant from interfering with the removal of the body in the future. The state of the evidence is such that there was in fact no opposition to that removal, and no occasion for the issuance of the writ."

The following review of two interesting court decisions shows the considerations which sometimes govern courts in determining who, as between different relatives of a deceased person, has the right to control burial. The chief importance of the question to funeral directors lies in the right to take charge of a body in the face of opposition of relatives who do not acquiesce in funeral arrangements made by other relatives. The case of *Snyder v. Snyder*, 60 Hun 371, which was decided by the New York Supreme Court, involved a state of facts which often arises. A man who had been twice married died, leaving his second wife without children. She desired that he be interred in her father's cemetery lot, and claimed the right to have the burial made there, as against a desire of a son by the former marriage to have the interment made by the side of the graves of the wife and children of the first marriage. The Supreme Court decided that, although as a general rule the surviving wife has the right to designate the place where her spouse's remains shall rest, the wife in this case did not have that right. The court said:

"The right to determine the place of burial must be solved upon equitable grounds. While there is property in the burial lot, in the monuments, in the ornaments and decorations of the deceased or his grave, there is none in the remains themselves. Since the common law cannot protect or bestow them as property, or afford an adequate remedy in cases which sometimes occur, equity has been invoked to grant such protection and give such remedies as seem to be required by the circumstances, and are in consonance with the feelings of mankind. To lay down the inflexible rule that the widow is to be preferred to the children might sometimes result in great harshness and outrage. Adopting this rule, I award the disposition of these remains to the son to the end that they may be buried in the lot purchased by the deceased in his lifetime, near the place of his early residence, where his first wife and two children by her are buried. He had no children by his last wife, the lot in which she proposed to bury him is her father's. It cannot be shown whether she will find her grave in the same lot and not by the side of another husband. It seems to be more in consonance with what we may presume his feelings in rational moments to have been to bury him by the side of his children and their mother, rather than alone in the lot of a stranger, and certainly more in consonance with the feelings of those who are bound closest to him by the ties of blood and longest affection. I mean to recognize the fact that circumstances may exist which should give the widow the preference over the son, but in this case I think the claim of the son is to be preferred."

On the other hand, the New York Supreme Court recognized the superior right of a husband to control the burial of his wife over the rights of her brothers and sisters, in the case of *Johnson v. Marinus*, 18 Abbott's New Cases 72. The wife's body had been placed in the receiving vault of a cemetery by the husband, and when he undertook to remove it to another cemetery for permanent burial the brothers and sisters brought a suit to restrain him from doing so, on the ground that the husband had been unkind to his wife and sought to have her body buried in a neglected cemetery. In deciding in favor of the husband the Supreme Court said:

"I find that the defendant, in the disposition that has been made and in that he proposes to make of the body of his deceased wife, is carrying out her wishes as expressed to him shortly prior to her death. Mrs. Marinus had a fear that she might be buried alive. I do not think that she had any objection to having her dead body placed in the ground. She so explained herself to her husband and gave directions as to the disposition of her body after death. Those directions he is endeavoring to carry out. The husband's right to the custody and control of the body of his deceased wife is sustained by the current American authorities. He has the right to select the permanent place of burial of her body, and he is liable for such burial. The receiving vault was not intended as the permanent restingplace for the body. The body was placed there in deference to the wife's wishes to be there for three months. The husband has the right to select the permanent burial place of the body, and ... the performance of the duty he should not be interfered with."

In an interesting case (*Darcy v. Presbyterian Hospital*, 95 Northeastern Reporter 965), plaintiff brought suit against defendant to recover damages for claimed interference on the part of the defendant with her right to receive the body of her son, who died in defendant's hospital, and for mental distress sustained through dissection

of his body. It appeared that a physician attached to the hospital caused a coroner to be summoned and an autopsy to be performed, after refusing to deliver the body to a funeral director employed by plaintiff to make the burial. The Appellate Division of the Supreme Court decided that there was no right of action, but this decision was reversed by the Court of Appeals, in an opinion which partly read as follows:

"The first question presented for determination is whether a cause of action for damages exists. Under the allegations of the complaint, the mother of the decedent was his nearest and only next of kin, and consequently was the person who was entitled to his body for burial. It must be conceded that in some jurisdictions it has been held that since there can be no property right in a dead body a personal representative of decedent cannot maintain an action for damages for the wilful or negligent mutilation of the body, although he may sue for injury to the wearing apparel.

The most elaborate consideration of the question in the courts of this country appears in the case of *Larson v. Chase* (47 Minn. 307), in which, after an examination of the authorities both in this country and in England, the conclusion is reached that while no action can be maintained by the executor or administrator upon the theory of any property right in a decedent's body, the right to the possession of a dead body for the purpose of preservation and burial belongs to the surviving husband or wife or next of kin, in the absence of any testamentary disposition [disposition by will], and that this right the law will recognize and protect from any unlawful mutilation of remains by awarding damages for injury to the feelings and mental suffering resulting from the wrongful acts, although no pecuniary damage is alleged or proved. This case has been followed in Massachusetts, in the case of *Burney v. Children's Hospital*, in which it was held that the father of a child, who is its natural guardian, has a right, in case the child dies, to the possession of its body for burial, and may maintain an action for an unauthorized autopsy performed upon the body of the child."

In the New York case, defendant relied upon the statutes which authorize coroners to order autopsies, but the Court of Appeals decided that before those statutes could constitute a defense it must appear that decedent "suddenly died under such circumstances as to afford a reasonable ground to suspect that his death has been occasioned by the act of another by criminal means, or has committed suicide."

SECTION 42. DISPOSITION OF BODY BY WILL

When a deceased person has left a will directing disposition of his body, and a surviving relative insists upon making a different disposition, an undertaker may find himself in a delicate position if called upon to perform services in opposition to the will or the wishes of the relative. As will be seen by the following review of decisions the courts of the country are not agreed as to whether a person is entitled to dispose of his own body by will so as to preclude exercise of authority over it by the surviving relatives.

In the case of *Enos v. Snyder*, 131 California Supreme Court Reports 68, it appeared that deceased was living apart from his wife and with defendant. His will directed that his body should be disposed of according to the wishes and direction of defendant.

Upon his death, the widow demanded surrender of the remains for the purpose of burial, and, the demand being refused, suit was brought to determine the right of custody. In sustaining the widow's right, the Supreme Court decided that one cannot by will dispose of his body, and that an executor or administrator, as such, has no right to the possession of the body of deceased for the purpose of burial. The court said:

"The general English and American authorities on the subject are not very satisfactory—at least, as to a contest, like the one here involved, between the next of kin and persons claiming under the will. It is quite well established, however, by those authorities, that, in the absence of statutory provisions, there is no property in a dead body; that it is not a part of the estate of the deceased person; and that a man cannot by will dispose of that which after his death will be his corpse. . . . But as someone must, of necessity, bury the dead, and must have the temporary possession of the dead body for that purpose, in the few cases where there has been any question on the subject equity has been invoked, and courts of equity have assumed jurisdiction and have given the necessary remedies, and it has been generally declared that the right of burial of a deceased wife or husband belongs to the surviving spouse, and in other cases to the next of kin, being present and having the ability to perform the service. . . . Of course, it is generally provided by statute, as in this State, that executors or administrators must pay 'funeral expenses' but it has certainly been the

custom in this country for the next of kin, and not the executor or administrator, to have the custody of the dead body, before the funeral and to bury it. Indeed, under our probate system, it cannot be determined who the executor or administrator is until after the appropriate time for the funeral has elapsed, and the burial of the dead body is not to be found in the statutory enumeration of the rights and duties of executors and administrators."

The Iowa Supreme Court has said: "It always has been, and will ever continue to be, the duty of courts to see to it that the expressed wish of one, as to his last resting-place, shall, as far as possible, be carried out. In one view, it is true it may not matter much where we rest after we are dead; and yet there has always existed, in every person, a feeling that leads him to wish that after his death his body shall repose beside those he loved in life. Call it sentiment, yet it is a sentiment and belief which the living should know will be respected after they are gone" (Thompson v Deeds, 61 Northwestern Reporter 842.)

In an interesting opinion in the case of *Pettigrew v. Pettigrew*, 207 Pennsylvania Supreme Court Reports 313, the court refused to follow the rule laid down in the California case above referred to. The Pennsylvania court said:

"When a man dies, public policy and regard for the public health, as well as the universal sense of propriety, require that his body should be decently cared for and disposed of. The duty of disposition therefore devolves upon someone, and must carry with it the right to perform. It is commonly said, being repeated from the early cases of England, where the whole matter of burials was under the jurisdiction of the ecclesiastical courts, that there can be no property in a corpse. But, inasmuch as there is a legally recognized right of custody, control and disposition, the essential attributes of ownership, I apprehend that it would be more accurate to say that the law recognizes property in a corpse, but property subject to a trust, and limited in its right to such exercise as shall be in conformity with the duty out of which the rights arise. Whether, however, the rights be called 'property' or not is manifestly a question of words, rather than of substance. . . . The right of control and disposition, whether called 'property' or not, springs, as already said, from the legal duty or obligation. In Pennsylvania, as generally elsewhere, that devolves on the executor or administrator. The statute puts the duty of paying the decedent's debts out of his assets on his executor, and expressly names funeral expenses as first in order of priority of payment. Prima facie, therefore, the duty to determine when, where and in what manner the body shall be buried rests with the executor or administrator. But his right is not absolute nor his judgment conclusive. The determination must rest, as said in *Fox v. Gordon*, 16 Phila. 185, 'upon considerations arising partly out of the domestic relations; . . . partly out of the sentiment, so universal, that the dead should repose in some spot where they will be secure from profanation; partly out of what is demanded by society for the preservation of the public health, morality and decency; and partly out of what is required by a proper respect for and observance of the wishes of the departed themselves.' Under the statute in Pennsylvania the right to administration belongs first to the surviving husband or widow. To such survivor, therefore, belongs the right of control of the body for interment, and a waiver of the right to administer will not include a waiver of such right of control, unless it be express or absolute. In the exigencies of business and the interests of the estate it is not unfrequently desirable that a stranger, or even a creditor, should administer, but no court would sanction a disregard by such an administrator of the wishes of a widow, or even of the next of kin, as to the place and manner of burial. How far the decedent's own wishes, or even his specific directions, are to prevail, must be regarded as unsettled. In *Williams v. Williams* (an English case) Kay, J., held that, the right of custody being incident to the duty of burial which is in the executors, a man in England 'cannot by will dispose of his dead body'. . . . The case grew out of the disinterment and cremation of the body of a stranger to the family, under written directions of the deceased; and with great respect for the tribunal I cannot help thinking that the decision was unconsciously influenced by the English conservatism in regard to burial and the attendant reluctance to countenance in any way the innovation of burning. The clear trend, I think, of the American decisions, is to the contrary, notwithstanding the apparent assent in *Enos v. Snyder* [the California case above mentioned]. And, whether the decedent's directions are regarded as paramount or not, it is agreed in all the cases that they are entitled to respectful consideration whenever the question comes into court. In the absence of surviving husband or widow, the wishes of the next of kin are entitled to be considered, with varying weight according to the nearness of the kinship and the personal relations between them and the decedent. A more distant relative, or even a friend, not connected by ties of blood, may have a superior right, under exceptional circumstances, to one nearer of kin. . . . The result of a full

examination of the subject is that there is no universal rule applicable alike to all cases, but each must be considered in equity on its own merits, having due regard to the interests of the public, the wishes of the decedent, and the rights and feelings of those entitled to be heard by reason of relationship or association. Subject to this general rule, it may be laid down: First—That the paramount right is in the surviving husband or widow, and, if the parties were living in the normal relations of marriage, it will require a very strong case to justify a court in interfering with the wish of the survivor. Secondly—If there is no surviving husband or wife, the right is in the next of kin in the order of their relation to the decedent, as children of proper age, parents, brothers and sisters, or more distant kin, modified, it may be, by circumstances of special intimacy or association with the decedent. Thirdly—How far the desires of the decedent should prevail against those of a surviving husband or wife is an open question, but, as against remoter connections, such wishes, especially if strongly and recently expressed, should usually prevail."

See, also, Section 41.

SECTION 43. WHAT CONSTITUTES CHRISTIAN BURIAL?

Criminal responsibility in the matter of disposing of the remains of a deceased member of one's family is treated in an interesting decision lately reached by the Kentucky Court of Appeals in the case of *Seaton v. Commonwealth*, 149 Southwestern Reporter 871. The case involved a prosecution which arose at Paducah, Ky., for failing to provide a Christian burial for defendant's deceased child, who died when about two weeks old. A conviction was reversed by the Court of Appeals on the ground that no legal offense was committed. The facts, as found by the court, were as follows: A neighbor suggested that defendant procure a burial permit, which he declined to do, claiming that it was unnecessary, and that he did not purpose to incur any expenses whatever on account of the burial. Using some pieces of rough board, he made a rude box, and took it to a point in a woods lot on his farm, which he said was a suitable place for the grave. At this place selected by defendant, two neighbors dug the grave about two feet deep. Defendant, in the meantime, brought the corpse from the house in a small paper box, to where the grave was being dug, placed it upon the ground, and assisted in digging the grave. When the grave was completed, the wooden box was lowered in it, the paper box with the corpse placed therein, the lid put on and the grave filled to the level with the surrounding ground, defendant assisting in this work by tramping the dirt as it was being put back into the grave. After the grave had been filled, he requested his companions to rake the leaves back over the place where the grave was, so as to conceal, as far as possible, its identity. Defendant declined to send for his wife's mother, and stated that he did not want any of his relatives notified. No services of any kind were held at the grave. The child was clothed before being put into the box, but as to the character of the clothing the evidence is silent. It further appears that defendant gave as a reason for wanting the identity of the grave concealed that, if his wife knew where it was, she would weep and grieve over it. Although defendant was a poor man, he was financially able to have bought a coffin for the child, had he desired to do so. It is also shown that he had lumber at and around his home out of which he could have made a better and more presentable box than that in which he buried the child, but he said that he did not propose using his good lumber for this purpose.

The court of appeals holds that defendant, as the dead infant's father, had the right to select the place of burial he did as against a public cemetery or private burying grounds. Other points decided in the case and the grounds of the decision appear from the following extracts from the opinion in the case.

"There is no rule of law defining how a corpse shall be dressed for burial, or the character of coffin or casket in which it shall be inclosed, or the material out of which the box in which the coffin is to be placed shall be made, or the depth of the grave. These matters are left, as from the very exigencies of the case they must be, for determination by relatives, friends, or persons having the matter in charge. The terms 'decent,' 'respectable,' and 'proper' burial, as used in this connection, are necessarily relative terms, varying, of course, with the financial and social standing of the deceased and his relatives, and not infrequently affected by the community and the rules of religious, social or political organizations of which the deceased may have been a member or with which he was affiliated. What would be regarded as entirely proper and appropriate by one might be regarded as wholly inadequate and altogether unsuitable by another, and so no rule governing the case can well be formulated, but, by common consent, a determination of these matters is left exclusively to the relatives or friends of the deceased.

"The evidence in this case shows that the corpse was clothed, and, we must

presume, properly so. The father chose a practically worthless paper box, in which to bury it, rather than go to the expense of purchasing a coffin or having one made. It was satisfactory to him, and, while it no doubt shocked the sense of propriety of his neighbors and the people generally in that locality, if he had a legal right to make a selection, no just ground of complaint is afforded, because, in the exercise of that right, he failed to make a selection that would have been, in the minds of his neighbors and friends, regarded as suitable, decent, proper, or appropriate.

"It is urged that, inasmuch as appellant was able to furnish a coffin, whether manufactured or home-made, in which to bury the child, he should be punished for his failure to do so. This claim is based upon the idea that the coffin must be of some wooden or metallic substance. There is no law so holding, and custom has not so decreed. Webster, in his New International Dictionary, defines a coffin to be: 'A chest or case for the reception of a corpse, commonly of wood or metal, though among ancients stone and pottery coffins occurred. Coffin generally designates the case immediately inclosing the body.' The custom of the country imposed upon appellant only the duty of decently burying his child; that is, it must be properly clothed when taken to the place of burial, and then placed in the ground or tomb, so that it will not become offensive or injurious to the lives of others. He may not cast it into the street, or into a running stream, or into a hole in the ground, or make any disposition of it that might be regarded as creating a nuisance, be offensive to the sense of decency, or be injurious to the health of the community. The good of society prohibits him from so doing. But, since he is left absolutely free to determine the kind of casket in which the child should be buried, we cannot hold that he should be punished because the selection made by him was not such as his neighbors and the people of the community in which he lived would have made.

"We next come to the question: Is appellant subject to punishment because he refused to permit his relatives and those of his wife, or others, to be notified, so that they might be present at the interment? His relatives and friends may have regarded his conduct on his part as lack of consideration or respect for their feelings in the matter, but this is the extent of the bearing which his conduct, in this particular, can have upon the case. They had no legal right to be present. They may have been offended, because not notified or invited, but no ground of complaint is afforded to the public on this account. In some localities funerals are not infrequently attended by invitation. Some are strictly private; while others are open to the public. These are matters which address themselves to the discretion and will of those in interest—the relatives and friends of the deceased.

"Lastly, did appellant, in causing interment to be made without any religious ceremony, render himself liable to punishment? It is usual in this and other civilized and enlightened communities to have the interment accompanied with some character of religious ceremony; but there is no law imposing upon those having in charge the burial of the dead such duty. There being no law requiring this almost universal custom, no just ground of complaint is afforded, because appellant failed to observe it. The customs of the country vary so much on the question of ceremonies used in the interment of the dead that, if it were not in violation of that provision of the Constitution, guaranteeing to every man the right to worship God according to the dictates of his own conscience, it would be utterly impracticable to prescribe a form that would be acceptable to the people generally.

"It was no doubt the extreme miserly and niggardly disposition manifested by appellant that aroused the indignation of his neighbors, causing the indictment, and ultimately induced the jury to assess the fine against him which it did. While, by the facts in the record, appellant is shown to be a man utterly lacking in parental instincts, he has kept himself within the pale of the law. At the conclusion of the evidence the trial judge should have directed a verdict in his favor."

SECTION 44 WHO MAY BE EXCLUDED FROM FUNERALS

No doubt funeral directors are occasionally embarrassed in the conduct of funerals by hostility between surviving relatives of the decedent in the matter as to who shall be permitted to attend. It is even conceivable that an undertaker might become involved in a legal way through refusing to permit some person to attend the burial service or to ride in the funeral procession. Therefore, it is a matter of interest, if not of practical importance to note what courts of high authority have decided on the general question as to the right of one in possession of a body for the purpose of burial to limit attendance at the funeral.

In the case of *Rader v. Davis*, 154 Iowa Reports, 306, it appeared that plaintiff had married defendant's daughter, and that a child was born of the marriage. A divorce was granted the wife on the ground of ill-treatment and she was awarded the custody

of the child. The court provided that the husband might receive monthly visits from the boy, and should pay \$2 monthly toward his support, which was not done. The wife and child went to the home of defendant, her father, where they were residing when the child died, aged about five years. The boy's mother made all the funeral arrangements, which included conduct of the funeral from her father's home. Plaintiff, the father of the boy, was, at defendant's instance, denied the right to attend the funeral, and later sued to recover damages on that account.

Trial of the suit resulted in judgment denying right of recovery, and the Supreme Court affirmed the decision on appeal, saying.

"Assuming that the death of the child so changed conditions as that the divorce decrees were inapplicable, we then have the question, had plaintiff either an absolute or qualified right to attend the funeral of his child, which was being held from defendant's house? He, of course, obtained no right by reason of his former wife having taken up her domicile with her parents. They were as much strangers to each other as if they had never been married. True, the child was of his own blood, but by decree of court he had lost all right of custody or control of the child, and it was for the mother to say how the body should be controlled, where the funeral services were to be conducted, and where and how the child should be buried. By plaintiff's misconduct (as conclusively established by the decree) he had forfeited all rights to the custody and control of the child which he might otherwise have had. So that plaintiff had neither an absolute nor a qualified right to control the disposition of the body of the child or the funeral arrangements. But it is said that he had the right to attend the funeral which was being held at defendant's house; and that whether he tried or not, and conceding defendant's lawful right to say who should come upon his private premises for any purpose, even to attend a funeral, yet if he, defendant, although acting within his strict legal rights, maliciously denied plaintiff the right to enter the premises to see his child, or to attend the funeral services, an action will lie.

"The questions thus presented are unique in character, and naturally there are no precedents which are directly in point.

"At common law the duty of providing sepulture and of carrying to the grave the dead body recently covered was cast upon the person under whose roof the death took place; for such a person could not keep the body unburied nor do anything which prevented Christian burial. *Commonwealth v. Susquehanna Coal Co.*, 5 Kulp (Pa.) 195; *Scott v. Riley*, 16 Phila. (Pa.) 106, 40 Leg. Int. 382.

"There was no duty, as we understand it, however, to conduct a public funeral, and, if there were, private funerals are so common in this country that we would not feel disposed to say that public services are required to be held. Defendant then was bound to provide sepulture and to carry the body to the grave; but he was not required to invite anyone onto his premises simply to see the dead body or to have any sort of burial services for the public. It is fundamental, of course, that a man's dwelling house is 'his castle,' and that no one has the right to enter except upon invitation, express or implied. He may exclude whom he will for good reason or for no reason, without liability for damages, and may defend his home against all intruders, even to the extent of taking life. *State v. Peacock*, 40 Ohio St. 333, *Pond v. People*, 8 Mich. 150; *State v. Scheele*, 57 Conn. 307, 18 Atl. 256, 14 Am. St. Rep. 106, *State v. Patterson*, 45 Vt. 308, 12 Am. Rep. 200.

"There is no implied invitation to anyone to attend a funeral conducted from a private dwelling unless it be announced that such funeral is public, and even if so announced the license or invitation may be revoked and anyone denied the right to attend whose presence might be objectionable. It has even been held that the lord of the castle may so far exercise his authority as to say that his wife's relatives may not visit her, either in sickness or in health. *Rogers on Domestic Relations*, section 172. See, also, cases cited in 21 Cyc. 1147, among which is *Shaw v. Shaw*, 17 Conn. 189, *Commonwealth v. Wood*, 97 Mass. 225, *Lawrence v. Lawrence*, 3 Paige (N. Y.) 267.

"The mother gave no intimation that she wished the father to see the child either while sick or after death, and defendant certainly had the legal right to exclude plaintiff from his premises at any time and under all circumstances. But it is said that, although defendant has this legal right, he could not exercise the same maliciously, and that if his act in excluding plaintiff was malicious action will lie. It is true that in some circumstances the doing of a perfectly lawful or legal act maliciously will give ground for an action; but we do not think this exceptional rule should apply here. As the control of one's own dwelling is absolute, the intent with which he excludes one therefrom is wholly immaterial."

SECTION 45 DISINTERMENT OF BODIES

The policy of the law to discourage disinterments has been expressed by the Iowa Supreme Court in the following language: "A proper appreciation of the duty we owe to

the dead, and a due regard for the feelings of their friends who survive, and the promotion of the public health and welfare all require that the bodies of the dead should not be exhumed, except under circumstances of extreme exigency.' Accordingly it is a well-settled general principle of law that where an interment has taken place by the consent, express or implied, of those most interested, the courts will not permit disinterment over the protest of those persons entitled to object, who generally, are decedent's next of kin. But in cases where a body has been buried without consent of the person who was entitled to select the place of burial, he will be permitted to remove the corpse over objection of others. Hence, the Rhode Island Supreme Court has decided that the right of a widow to remove the body of her husband from its place of original sepulture depends upon her consent to the first interment. But in Iowa a widow was enjoined from removing the remains of her deceased husband where the only reason assigned by her for the removal was that his daughter, who owned the lot, refused to allow her to erect a monument thereon, decedent having expressed a desire to be buried in the lot. It was decided in the case that permission by the daughter to make the burial carried with it the right in the widow to erect the monument. In a case which arose in New Jersey it was held that where a husband consented that she be interred in her parent's burial lot, and they exchanged it for another plot in the same cemetery, where a suitable place was prepared for the remains at great expense, the husband, who knew of the preparations for the exchange and who did not object to the plan, could not interfere with the removal. In a New York case it appeared that a wife was buried in a Catholic church cemetery, with the husband's consent, though he knew that, on account of his not being a member of that church, he could not be buried beside her. Several years later he died and was interred in another cemetery. On these facts it was decided by the courts of New York that their children were not entitled to an order of court permitting them to remove their mother's remains to a place beside their father's. A decision of the Maine supreme judicial court is authority for the proposition that when a husband has buried his wife in a lot with the consent of the owner, that even he is not entitled, without the owner's consent, to remove the body. On the other hand, the Rhode Island Supreme Court holds that the owner of a lot, consenting to interment therein, cannot remove the body against the will of decedent's next of kin. In Louisiana the Supreme Court has decided that a tomb owner was without right to cause removal of remains transferred from the place of sepulture first selected by the surviving relatives and deposited by him in the tomb under his assurance, on which they permitted the transfer, that the remains should rest there forever.

The sanctity with which the law regards dead bodies, especially after interment, is shown by the following extract from an opinion of the South Carolina Supreme Court, in which an order was made for the exhumation of a body to enable its identification as the child of a woman who claimed the right, as mother, to inherit property left by decedent.

"All those who have been instructed in and who believe the Bible, believe that the living body is made in the image of God, that it is his temple, and that the 'Spirit of God dwelleth in it'. If that be so, then even the dead body ought to be, and is, regarded with grave concern. When it has been put away, 'earth to earth,' it ought not to be lightly disturbed. For that reason an order directing its exhumation ought not to be made except upon the most serious consideration. And it matters not whether it be the body of one called saint or sinner, if we dare to pretend to a knowledge of that character.

While the dead body ought not to be, and is not, subject to the control and gaze of all or many individuals, it ought to be subject to the examination of her who bore it. The petitioner here claims to be the mother of her who is dead. If that be so, then she ought to have the right and privilege to undo the grave and see its inhabitant." (In re Percival's Estate, 85 Southeastern Reporter, 247.)

The question whether the court in a prosecution for murder has power to order the decedent's body to be exhumed for examination was before the West Virginia Supreme Court of Appeals in the case of *State v. Highland*, 76 Southeastern Reporter, 40. The court decided that even if the power exists, it can be exercised only when plainly necessary in order to do justice in the trial, and that the matter rests largely within the discretion of the court. The following is an extract from the opinion.

"We have presented to us for the first time the question whether a court can, on a murder trial, at the motion of an accused, order the dead body of the victim of the crime to be exhumed for examination for evidence purposes. Can it, without the consent of the kindred of the dead, invade the sacred precincts of the cemetery and tear open the grave, and tear open again and lacerate afresh the hearts of those that loved him, and to whom his memory is sacred and dear? With what reverence do we all regard the graves of our dead, and each returning spring cover them with beautiful flowers. There is an instinct planted by nature in the human breast to feel a strong aversion—almost horror—

at the desecration of the grave. The maxim, 'Requiescat in pace' (Let him rest in peace) speaks this feeling. The great dramatist impressively tells this tender emotion in the prayerful epitaph written by his own hand for his tombstone:

"Good friend, for Jesus' sake forbear
To dig the dust enclosed here;
Blest be the man that spares these stones,
And cursed be he that moves my bones."

"It is said that the conquering Moslem respected the graves of Abraham, Isaac and Jacob, and Sarah, Rebekah and Leah, their wives, by abstaining from the removal of their bodies from Macphelah when building a mosque. Genesis xlix 31. Diogenes and his disciples regarded burial with contempt, and held it unimportant whether bodies should be burned by fire or devoured by beasts, birds or worms; and some modern French philosophers descanted upon the 'glorious nothingness of the grave' and that 'nameless thing,' a dead body, but the human heart and the secular jurisprudence of civilized nations in our day regard the grave and its body in much higher esteem. It was a misdemeanor at common law to disinter a dead body. Our code enforces this sentiment by punishment in the penitentiary of one unlawfully disinterring a dead body.

"For some purposes the law respects and enforces the right of next of kin as to a dead body. So much that even a surviving wife or husband cannot remove a body, after it is at once buried, against their will. Though the minister at the grave says, 'Dust to dust, ashes to ashes,' thus seeming to make the remains a part of the soil, Blackstone there says that, though the heir has property in the monuments of his ancestors, 'yet he has none in their bodies or ashes,' and cannot sue one for disturbing the remains. I would question this at this day. I think he could bring trespass or injunction.

"Even now we cannot say that the heir or next of kin has strictly property in the remains; but they have property in a sense, such as will give them in law right of burial, protecting the graves, and the like. The notable case of *Pierce v Proprietors of Swan Point Cemetery*, 10 R. I. 227, 14 American Reporter 667, holds that 'while a dead body is not property in the strict sense of the common law, it is quasi property, over which the relatives of the deceased have rights which the courts will protect.' I find much law to that effect. In view of such right in relatives, I doubted the right of a court to invade the grave in a criminal prosecution to which the relatives were not parties. And I find a federal Circuit Court holding that a court has no power to order the exhumation of a dead body in an action at law to which the widow, who has a right to control the body, is not a party, but that a court of equity may, she being a party. If we follow mere sentiment or emotion we would deny even a court this power. But there is the call of justice, and the principle that a court can take these steps essential to administer justice, as an organ of the government.

"Let us see further, as to this power. Note that the Code of 1906, c. 149, § 13, makes it a felony to 'unlawfully disinter' a dead human body. Surely a coroner had power to disinter to hold an inquest. His inquest must be *super visum corporis* (on view of the body), and this calls for exhumation. Some authorities hold that the court has such power of disinterment for evidentiary purposes. In *Moss v State*, 152 Ala. 30, 44 Southern 598, the court said that if it had the power to exhume, the matter was in the discretion of the court, and its refusal not reviewable. It is laid down in 3 Encyl. Pl. & Pr. 46, note, that a second inquest is a matter of discretion, according to the circumstances and length of time since burial. In 82 Am. Dec., page 514, it is laid down that, when the body has been buried, no one has a right to remove it without the consent of the owner of the grave, or leave of the proper ecclesiastical, municipal or judicial authority."

The Texas Court of Civil Appeals at Amarillo has followed in the footsteps of other courts by holding that while it is true that in the ordinary case the surviving husband or wife has the first right to say where and how his or her deceased spouse's remains are to be interred (which necessarily includes choosing the particular funeral director who shall attend to the burial), still the choice once made is final, unless some very good reason for causing disinterment be shown. Human remains are not to be treated like tulip bulbs—planted one spring in one spot and removed to another spot next spring. Nor is ill-feeling between the surviving helpmeet and the in-laws to be treated as a consideration entitling the former to remove the decedent's remains from burial ground under control of the latter.

Although there was a conflict of testimony as to the facts, the court finds that defendant wife assented to the interment of her husband's remains in a lot in which it was contemplated that her body and the remains of his parents would be interred. But several months later defendant undertook to cause reinterment in the same cemetery. Thereupon the suit was brought to enjoin defendant and a funeral director from proceeding to the disinterment. Affirming a decree of the trial court awarding the injunc-

tion prayed for, the Court of Appeals says (*Curlin v. Curlin*, 228 Southwestern Reporter, 602):

"It is established by most of the courts in the United States that the wife, upon the death of the husband, has the primary and paramount right to the possession of his body and the control of the burial or other legal disposition thereof. This right is given her in preference to others or the next of kin to the deceased. This right is recognized in this state in the case of *Foster v. Foster*, 220 S. W. 515, and is the generally accepted rule by most of the courts passing on the question. *O'Donnell v. Slack*, 123 Cal 285, 55 Pac 906, 43 L. R. A. 388, *Hackett v. Hackett*, 18 R. I. 155, 26 Atl 42, 19 L. R. A. 558, 49 Am St Rep 762, and many other authorities, some of which are cited below announcing the general rule.

"According to the court's findings of fact, appellant, the wife, and the appellees, father, mother and brother, selected a lot belonging to the father for the burial of the deceased, and the wife requested space be left by the side of his grave, where she could be buried later, upon her death. The space was left as requested. Under this finding she expressed her right of selection and the place of burial. The place so selected, as indicated by the finding, was for the final resting place of the body.

"After so selecting the place the question remains whether she could exhume and remove the body to another lot subsequently purchased in the same cemetery, by the appellant, without the consent of the appellees, who were the owners of the lots upon which the body was buried. We think the right remains with the wife to remove the body, but this right is a qualified one. With regard to reinterment, the right in the wife still exists, reserving always the right of the court to require a reasonable cause to be shown for it. The presumption is against a change. The sentiment of humanity is not only against profanation, but disturbance. This disinterment of dead bodies is discouraged by the courts, as we think the trend of decisions indicate, and is as well repugnant to the sentiment of humanity. Removal should not be permitted except under circumstances indicating a necessity or for compelling reasons therefore."

SECTION 46. LEGAL REMEDIES AGAINST WRONGS

The sanctity with which the law regards the bodies of human beings after death is illustrated by a decision of the Indiana Supreme Court, handed down by that court in the case of *Orr v. Dayton and Muncie Traction Co.*, 96 Northeastern Reporter 462. In deciding that a suit for damages is not the only remedy for wrongful molestation of bodies, and that suit will lie by injunction to prevent such wrongs, the Indiana court said:

"We are not able to assent to the view that an action for damages would be the sole remedy, nor do we hold that there is such a remedy, but it certainly would not be an adequate remedy, for the kindred are entitled to have the ashes of their dead protected, whilst an action for damages in that particular would be so incapable of measurement that it must necessarily be that only nominal damages could be awarded, neither solacing the living nor protecting the dead. That it would be the subject of injunctive relief seems reasonable. The sepulchers of the dead, and the monuments thereof, and the fences or other structures in cemeteries are protected by the criminal statutes. But they do not present other than public rights. They do not present the question of private rights, for while there cannot be said to be property in the bodies of the dead in the general sense of property, the bodies of the dead are the subject of rights which the courts ought to and will respect by proper actions."

SECTION 47. RIGHT TO DETAIN BODY FOR DEBT

Although some funeral directors have induced payment of their charges through refusing to surrender possession of bodies until payment was made, no legal right of lien exists. On the contrary, I am of the opinion that there is no right to withhold remains from persons legally entitled to their custody for the purposes of burial. In fact, I conclude that an undertaker renders himself subject to suit for damages for impeding burial by insisting on a right of lien.

It is a general rule of law that a person who performs service on a chattel is entitled to retain it as security for the payment of his charges, but in law a body is "property" in a limited sense only, and the courts have always expressed abhorrence at the idea of treating human remains as merchandise.

Long ago it was decided by American and English courts that it is unlawful to detain a body for a debt, even when a living person might be imprisoned for nonpayment of his pecuniary obligations. (1 Maine Reports, 226, and 2 Queen's Bench Reports, 248)

The law recognizes property rights in a human corpse only for the purpose of

securing the right of burial to surviving next of kin. These rights are summarized by the Minnesota Supreme Court in the case of *Larson v. Chase*, 47 Minnesota Reports, 307:

While it may be true still that a body is not property in the common commercial sense of that term, yet in this country it is, so far as we know, universally held that those who are entitled to the possession and custody of it for the purposes of decent burial have certain legal rights to and in it which the law recognizes and will protect. Indeed, the mere fact that a person has exclusive rights over a body for the purpose of burial leads necessarily to the conclusion that it is his property in the broadest and most general sense of that term, viz., something over which *the law accords him exclusive control* . . . The important fact is that the custodian of it has a legal right to its possession for the purpose of preservation and burial, and that *any interference with that right, by mutilating or otherwise disturbing the body, is an actionable wrong.*

A case which throws a little light on this subject was decided by the Texas Court of Civil Appeals (*Wright v. Harned*, 163 Southwestern Reporter, 685). There a man died while living apart from his wife. Friends told plaintiff, a funeral director, to take charge of the remains. When the body had been embalmed, a telegram was received from the widow to hold the body until her arrival. Plaintiff placed the remains in an \$1,800 casket, and on the widow's arrival she repudiated the selection of casket and authorized another firm of undertakers to take charge of the body. Plaintiff surrendered possession of the body on the condition that the casket be taken with it, but the second firm placed the remains in a new casket selected by the widow and the other was stored subject to plaintiff's order. In a suit brought by plaintiff to recover against the estate for the \$1,800 casket he was defeated. The court, however, decided that plaintiff was justly entitled to payment for the expense of embalming because that was a proper and necessary service.

In several states there are drastic statutes which make interference with the possession of dead bodies punishable by fine or imprisonment. For instance, in Minnesota there is a law which reads as follows:

"Every person who shall arrest or attach the dead body of a human being upon a debt or demand, or shall detain or claim to detain it for any debt or demand, or upon any pretended lien or charge, or who, without authority of law, shall obstruct or detain a person engaged in carrying or accompanying the dead body of a human being to a place of burial, shall be guilty of a misdemeanor."

Under such a law it seems that a funeral director who should attempt to hold a body as security for unpaid charges would subject himself to prosecution. It is also plain that any malicious or wrongful act where the progress of a funeral procession to a grave is impeded would amount to a violation of the statute.

CHAPTER XIV

CORONER LAW

SECTION 48. IN GENERAL

Many of the states have laws forbidding embalming of a body where the circumstances are such as to raise a suspicion that the death was caused by criminal means, without first obtaining a permit from the coroner, or of a justice of the peace in the absence of the coroner, or some other official permit.

The law enacted at the 1915 session of the Alabama legislature making persons ineligible for election as coroners in certain counties unless practicing physicians in good standing is not unconstitutional as unjustly discriminating against persons outside the medical profession. (Alabama Supreme Court, Board of Revenue of Jefferson County v State, 74 Southern Reporter, 364.)

The South Carolina Supreme Court holds that a coroner is without authority to refuse the public the right or privilege of attending an inquest, but that one who is apt to be prosecuted for homicide as a result of the inquest has no right to appear by counsel to cross-examine the witnesses in behalf of his client. (State v Griffin, 82 Southeastern Reporter 254.)

In at least one case, question has been raised in the courts as to the superior powers of the coroner when he appears in his official capacity, for it was held by a New Jersey court that a police officer improperly refused a coroner admission to a house in which the body of a murdered woman was lying. It was decided that the coroner is supreme in such cases. No official in the county can dispute him, and, when he appears, he supersedes the chief of police. (10 N. J. Law J. 47.)

The power of a coroner to bind his county by engaging a chemical expert to make an analysis of the contents of a dead person's stomach, to ascertain whether the death resulted from poisoning, when there is a suspicion of criminal agency in the death, depends largely upon the wording of the statutes of the state. But that laws will be interpreted liberally as conferring the power is shown by the decision of the Indiana Supreme Court, handed down in the case of Jameson v. Bartholomew County, 64 Indiana Reports, 524, where the court said:

"It is very clear, we think, that it was the intent and purpose of these statutory provisions to clothe the coroner of the county, whenever he should be notified that the dead body of any person, supposed to have come to his death by violence or casualty, was within his county, with the necessary power to properly inquire, and if possible ascertain how, in what manner and by whom such person came to his death, and whether any one was guilty of said death, and the degree of guilt. The welfare of society and the interests of public justice alike demand that such an inquiry or inquest should be thorough and complete, to the end that, if the death has been caused by a criminal agency, the guilty may be discovered and receive merited punishment, and the innocent may, perhaps, be freed from unjust suspicion. We think, therefore, that these statutory provisions should be liberally construed, with a view to the accomplishment of the end desired, and in such manner as to enable the coroner, where the death of a human being has apparently been caused by criminal agency, to employ such scientific means, and persons skilled therein, as may be necessary to ascertain the cause of such death."

SECTION 49. WHEN INQUEST IS PROPER

The general rule of law followed throughout the country is that an inquest is improper unless there is some reasonable ground for suspecting that the deceased person came to his death through cause for which someone is legally liable. It is not necessary that there be a suspicion of murder or felonious assault; an inquest is proper when it appears that the death may have resulted from criminal negligence. But where it is caused by disease or pure accident, as in the case of a boy who was kicked by

a house, I fail to find legal authority for holding that the coroner is authorized to incur the expense of an inquest, much less that there is any duty to inform him

Said the Illinois Supreme Court in the case of *Albaugh-Dover Co. v. Industrial Board*, 278 Illinois Reports 179,183.

"Hausknecht died under the care of a physician, of tuberculosis of long standing, and there was no supposition that he came to his death by violence, casualty or an undue means, so that the coroner was not authorized to hold any inquest over his body. It is only in cases within the statute that a coroner's jury may inquire how, in what manner and by whom the dead body came to its death and the other facts of and concerning the same."

Although there are numerous decisions of the courts of the several states sustaining the coroner's right to hold an inquest—in fact, making it his clear duty to do so—when there is reasonable ground for suspecting death by *unlawful means* or *where the cause of death is unknown*, the cases hold that if the cause of death is not doubtful, and there is no reason to suspect that it implicates any person, an inquest should not be held. Thus an inquest is unnecessary where it is quite evident that death has been caused by suicide, by pure accident, by an act of God, by negligence of the deceased, by disease, or other natural causes. (13 Corpus Juris, 1246)

The word "violence," as used in the coroners' statutes has been interpreted by an Ohio court as meaning use of physical force or other agency to cause death, and not mere accident. And a Pennsylvania judge has declared that "violence and undue means" refers to *unlawful* conduct of another causing the death. In another Pennsylvania case, a Philadelphia judge said:

"In two of the cases before me the inquests find that the deceased was struck by lightning; one finds that the deceased died in an apoplectic fit, and another that the deceased died in an epileptic fit, and the fifth one finds that the deceased fell down stairs in a drunken fit. One would suppose that when death occurs in a fit of epilepsy, or by a stroke of apoplexy, or by a stroke of lightning, or by a fall induced by drunkenness, that such death was not caused by the commission of any felony or by undue means, or in any unnatural manner, or in a suspicious or doubtful manner. These deaths, or at least four of them, certainly occurred through a visitation of God, and this could be as well known to the public and to the neighbors of the deceased as though he or she had died in his or her own bed. There can be no excuse for the coroner, or a justice of the peace in his absence, holding inquests under such circumstances as I have narrated."

But that a coroner is entitled to exercise reasonable discretion in determining whether an inquest is necessary is shown by the following general statement of the law, which is supported by numerous court decisions:

"The decision of the question as to whether an inquest is necessary rests in the sound discretion of the coroner, and the presumption is that in holding an inquest he has acted in good faith and for sufficient cause. Thus, a coroner has jurisdiction to hold, and is justified in holding, an inquest, if he honestly believes information to be true which has been given to him, and which if true would make it his duty to hold such inquest. But the power is not to be exercised capriciously or arbitrarily. Thus, where the cause of death is unknown, and a physician refuses to give a certificate of the cause of death, the coroner has, in the absence of other information, no discretion to refuse to hold an inquest on the ground that it is unnecessary; for while it is true that coroners ought not voluntarily to obtrude themselves into private houses, when they have received no notice from the police or other authority that death has occurred under circumstances which appear to them to call for an inquest, it is also true that, when a coroner receives from the proper police authorities information of a sudden death, in order that an inquest may be held, and when there is no medical certificate of death from any natural cause, or other ground on which he can reasonably form an opinion as to the actual cause of death, it is his duty to hold an inquest" (13 Corpus Juris 1247)

In a comparatively recent case, it was decided by the Arkansas Supreme Court that a coroner was not justified in holding an inquest over the body of a boy who had drowned, where there was nothing to indicate that the drowning was feloniously caused, although there was nothing to show just how the boy happened to drown. (*Harris v. Clark County*, 186 Southwestern Reporter 290)

The Georgia Supreme Court was once called upon to determine whether bleached bones forming part of a human skeleton, which were unearthed or washed upon the banks of a creek, constituted a "dead body," and whether a soap box, in which they were afterward interred, without expense to any one, constituted a "coffin." These questions were decided in the negative. They were important on an issue whether the county was liable to the coroner for services rendered by him in holding an inquest over the bones

and in disposing of them. His claim for statutory fees for holding an inquest over a "dead body," and "for furnishing coffin and burial expenses" was rejected by the courts. In several cases wherein other courts have been called upon to legally define "dead body" they have uniformly held that the term is synonymous with "corpse."

The circumstances under which a coroner may lawfully hold an inquest, and the necessity for impaneling a jury before he can claim fees, were considered by the Nebraska Supreme Court in the case of *Holyoke v Lancaster County*, 55 Northwestern Reporter, 950. Plaintiff, as county coroner, made an investigation, without a jury, of the circumstances under which a man was killed in railroad yards, personally examined the body and had it delivered to a funeral director for preparation for burial. In due course he presented a claim to the board of county commissioners for statutory fees, but it was disallowed on the ground that there had been no "viewing" of the body, within the statutes of Nebraska, inasmuch as no jury had been impaneled. On appeal to the county court the claim was allowed, but on further appeal taken by the county it was finally disallowed.

Said the Supreme Court

"The office of a coroner is a very ancient one, and came with the common law to this country from England. The powers and duties of a coroner here are what they were at the common law, except in so far as they have been modified by our statutes or institutions. At common law the coroner was required to hold an inquest over the body of a person who had died from visitation of God, by chance or accident, by his own hand, by the hand of another.

But, at common law, suicide was a crime, and the goods of the deceased were forfeited to the king, and if any animal killed a person, or if a cart ran over him, this animal or instrument was forfeited. It is perhaps for this reason that the coroner, at common law, was obliged to investigate a death, although known to have been a suicide, or known to have been caused by some casualty. Our statute, however,

provides: 'The coroner shall hold an inquest upon the dead bodies of such persons only as are supposed to have died by unlawful means.' This is substantially the provision in most of the States. Under this the coroner has nothing to do with investigating the death of any person unless such person is supposed to have come to his death by unlawful means. If a person was known to have committed suicide, or if he was known to have come to his death from a stroke of lightning, or known to have received his death by a fall from a building, the coroner would have nothing to do with holding an inquest over the body of such persons. The statute last above quoted, when the coroner shall have been notified of the finding of a dead body of a person supposed to have died by unlawful means, requires the coroner to summon forthwith six lawful men of the county to appear before him at a time and place named in the warrant. This statute is mandatory, and if the coroner has received notice of the finding in his county of someone dead and that person is supposed to have died by unlawful means, then it is the duty of the coroner to forthwith summon a jury, and proceed to hold an inquest, and ascertain the cause of the death of the person.

It appears from this statute, then, that, in order for him to view the body of a person found dead in his own county, he must have reached the conclusion that the person came to his death by unlawful means, otherwise he has nothing to do with the dead body. The statute does not provide on what notice or information the coroner may act, or what notice or information is sufficient to authorize him to hold an inquest, but, doubtless, that is a matter to be exercised by him in an honest and faithful manner, and he is invested, by virtue of his office, with the discretion to determine for himself whether he should or should not hold an inquest. Of course, he must not act from mercenary motives, and unnecessarily hold an inquest for the purpose of obtaining fees. But, when he does act, he can only act in the manner provided by law, that is to say, the coroner, by virtue of his office, has no right to hold an inquest alone. When a person has been found dead and is supposed to have died from unlawful means, the statute provides that the facts as to the manner or means by which deceased came to his death shall be ascertained by a jury."

Replying to a contention made by the coroner in the Nebraska case to the effect that the word "viewing" found in the laws of that state relating to inquests is used in the ordinary sense, and that when the coroner has been informed that some person has been found dead in his county, and it is supposed the person came to his death by unlawful means, then, if the coroner goes and views the body, he is entitled to a fee of \$10, the Supreme Court said:

"The word 'viewing,' as here used, means something more than looking, seeing, beholding. It means inspection, investigation, an inquiry into the cause of the death of the person. And the coroner cannot alone make this inquiry, and he is not entitled to his fee unless he has, with a jury, held an inquest as provided by law."

Under the statutes of Georgia, an eye witness to the cause of death deprives a

coroner of authority to hold an inquest, and he can claim no fees for holding one, according to a decision of the Georgia Court of Appeals, handed down in the case of *Herndon v. Jones County*, 89 Southeastern Reporter, 1047

The statutes provide that "the coroner shall take inquest . . . of all violent, sudden deaths, when there are no eyewitnesses to the killing or cause of the death, and such death occurs under suspicious circumstances," and that "no inquest shall be held over any dead body when the cause of the death was violence or accident, or act of God, in the presence of witnesses, unless some person makes affidavit of facts raising a suspicion of foul play, when an inquest shall be had, but at the expense of the party making the affidavit"

In the above cited case, involving the right of a coroner to fees for services in holding an inquest, question was raised as to whether the words "eyewitnesses" and "witnesses" meant more than one witness to a death, and the court decided that it requires but one witness to divest the coroner's jurisdiction

SECTION 50 PLACE FOR HOLDING INQUEST

For the purpose of conferring jurisdiction on a coroner to hold an inquest, "a body is 'found' within the county when it is ascertained by any means that it is within the county" (*Ohio Supreme Court, State v. Bellows*, 56 Northeastern Reporter, 1028)

In the case of *Moore v. Butte County*, 78 Nebraska Reports, 561, it appeared that a man was killed by a train in Cheyenne county, and was removed to Box, Butte county, where the coroner of the latter county held an inquest His claim for fees, etc., was disallowed by the county on the ground that he had no jurisdiction to hold an inquest over the remains of a person killed in another county But the Supreme Court held otherwise, saying

"Doubtless, when a coroner finds in his county the body of a person who has evidently come to his death by violent means, although he may have reason to suspect, or even may know, that the violence was inflicted outside his own county, he has a very wide discretion in determining whether the circumstances are such as to require an official investigation at his hands, and that, at least so far as jurors and witnesses are concerned, his determination of that question is final They certainly have no discretion justifying disobedience to his summons As respects jurisdiction, pure and simple, we think that the finding of a person who has apparently come to his death by violence or mysterious or unknown means is sufficient to confer it The place where the violence was committed or the death occurred may be the most significant fact to be ascertained, and for the purpose of discovering it an inquiry may be in the highest degree important. Interminable delays might result from a practice which should require a preliminary determination of these facts before an inquest could be set on foot, or which should require the body to be transported to another and perhaps distant county before one could be begun"

But, under the statutes of Arkansas, a different conclusion was reached by the Arkansas Supreme Court in the case of 74 Ark 183 In this case, two residents of Pulaski county were killed in a railroad accident in St. Francis county, and their bodies were shipped home for burial While they were in an undertaking establishment at Little Rock (Pulaski county), the coroner of that county received information that a man was under arrest in St. Francis county, charged with having intentionally caused the wreck He immediately summoned a jury and held inquests, but his claim for fees was disallowed In affirming the disallowance the Supreme Court said

"The power and authority of the coroner from usage and statute have been much curtailed, and his authority for holding an inquest is found in Section 794, Kirby's Digest (Arkansas Statutes) Two instances occur in which it is his duty to hold inquests

"(1) If the dead body of any person be found, and the circumstances of his death be known, and (2), if any person die, and the circumstances of his death indicate that he has been foully dealt with

"In the first instance, it would not matter where the crime occurred, as the finding of the body and the circumstances of the death being unknown would give the coroner jurisdiction to start an inquiry into the cause of death The appellant does not claim under that clause, but under the second, where information has been given indicating that the death was produced through foul means This would undoubtedly have justified the coroner of St. Francis in holding an inquest, and in fact would have made it his duty to do so 'The object of an inquest is to seek information, and to obtain and secure evidence in case of death by violence, or other undue means.'

Keeping these objects and purposes in view, it is clear that they all apply to the duties of the coroner at the place the crime was committed (or the body found), and not at the place where the body may be sent for interment. . . .

"The whole object of the statutes is attained when the coroner of the county where the crime is committed or the body is found holds the inquest, and no other coroner has jurisdiction, and no useful purpose would be secured in giving him jurisdiction"

But it will be noted that even this Arkansas decision does not hold that a coroner can hold an inquest without the presence of the body in his county

In the case of *People v. Jackson*, 47 New York Miscellaneous Reports, 60, it was decided that a coroner could not lawfully act beyond the jurisdiction for which he was elected. The court said:

"It is clearly agreed," says Hawkins, in *Pleas of the Crown*, 'by all the books, that a coroner has no manner of power to take an inquisition of death without a view of the body, and that any such inquest taken by him without such view is utterly void.' The statute of Edward also provided 'that through all the shires sufficient men shall be chosen as coroners of the most wise and virtuous knights,' thus laying the statutory foundation for the doctrine which has obtained general acceptance in England and America, that a coroner has jurisdiction only in the county for which he was elected, and that jurisdiction depends for its exercise upon the body being within that county."

The New York court cites an earlier case in the same state where it was held that a coroner had the right to exhume a body for the purpose of holding an inquest, although the death had occurred in another state

What the court says concerning the New York statutes applies to the laws of many other states

"When section 773 says that when the coroner is informed that a person has died he must go to the place where the person is and forthwith inquire into the cause of death. What person? The person that has died. This essential of going to the place where the dead person is lies at the threshold of all further proceedings. If he goes to the place and finds that there is no dead person, he cannot proceed; there is nothing for him to do, and it is equally manifest that, if he cannot officially go to the place where there is a dead person, there is also nothing for him to do. That the dead person must be in a place to which he can go, a place that is within the limits of the territory where he can exercise his authority, is an essential to his performing any official act in relation to the death of such person."

"When the defendant was informed that Maria Smith had died under suspicious circumstances it was his duty to go to the place where she died—if he could; but he could not, for the place was in New Jersey; and that he had no power to go there is too plain for argument."

SECTION 51 BURIAL EXPENSE ALLOWANCES

The Illinois statute relating to coroner's fees was interpreted by the Appellate Court of the state in the interesting case of *Stullken v. Sims*, 199 Ill. App. 102.

One Kernke died at a hotel in an Illinois town under circumstances which warranted the coroner's inquest held. Decedent had \$86.55 in cash on his body at the time he died, and defendant, the coroner, took possession of it, as was proper. Defendant summoned funeral directors who prepared the body for burial and did all things necessary for the interment. Defendant did nothing concerning removal and burial of the body beyond the mere act of delivering it to the funeral directors.

The public administrator refused to allow defendant credit for the latter's charge of \$12 for "burial expenses," the funeral bill having been paid by the estate against which that bill was filed. Suit by the administrator to recover the money in the defendant's hands was met by an offer to pay the amount less defendant's fees as coroner and the \$12 item above mentioned. Trial of the suit resulted in allowance to defendant of \$10 for holding the inquest and \$1 for empaneling the jury, but in disallowance of the \$12 charge. Defendant appealed to the Appellate Court where the judgment was affirmed.

The decision turned upon a section of the Illinois statutes prescribing coroner's fees as follows:

"For holding an inquest over a dead body, when required by law, in counties of first and second class, ten dollars, in counties of third class, five dollars. For summoning the jury, one dollar, in all counties. For burial expenses, in counties of first class, fifteen dollars; in counties of second class, twelve dollars, in counties of third class, ten dollars. All of which fees shall be certified by the court and paid out of the treasury when the same cannot be collected out of the estate of the deceased."

Defendant's attorneys argued to the court that this statute should be interpreted, as to "burial expenses," as fixing a fee to be allowed the coroner by virtue of his office

for causing the body of a deceased person, over whose body he has held an inquest, to be decently buried, where the body has not been called for and delivered to the friends of the deceased, and that this fee is not owing for anything done or labor actually expended by the coroner, but simply as a fee for causing the body to be decently interred by some undertaker.

On the other hand, the attorneys for the administrator took the position the statute provides for an allowance to the coroner only when actually expended by him in giving the body proper interment. This is the view the court adopted, saying:

"We are of the opinion that the latter construction of said statute is the proper one, for to hold otherwise would be to give to the word 'expenses' a meaning entirely different from the meaning usually attached to it. Words of a statute are to be interpreted according to their common and popular acceptance and import, and words of legal import are to be considered as having been used by the Legislature in that known sense."

CHAPTER XV

AUTOPSIES AND MUTILATION OF BODIES

SECTION 52. RESPONSIBILITY IN GENERAL

The decision handed down by the Missouri Supreme Court in the case of *Maloney v. Boatmen's bank*, 232 Southwestern Reporter, 133, will in part, interest the funeral director by reason of its observations as to the actionable character of wrongful mutilation or other mishandling of dead bodies.

Plaintiff sued for damages for injuries sustained when a wall of defendant's building, which had been gutted by fire, a day or so previously, fell upon an adjacent building in which plaintiff was working. In the course of the opinion, the supreme court said.

"The defendant had no right to throw the wall upon the dead bodies in the ruins of the building. At common law it was an offense to treat a dead human body indecently. 17 C J 1148. An action for damages will lie for the unauthorized mutilation of a dead body. Id 1144, sec 18.

"The right is to the possession of the corpse in the same condition it was when death supervened. It is the right to what remains when the breath leaves the body, and not merely such a hacked, hewed, and mutilated corpse as some stranger, an offender against the criminal law, may choose to turn over to an afflicted relative.' *Foley v Phelps*, 1 App Div 551, 37 N Y Supp 471.

"It was held, in *Kyles v Southern Ry Co.*, 147 N C 394, 61 S E 278, where a section master negligently permitted remains to be exposed on a track and failed to care properly for them, that the company was liable to decedent's widow for actual physical and mental suffering sustained by her through knowledge thereof, although the section master acted in good faith, believing he was bound to await the arrival of the coroner before disturbing the remains. The court said.

"The defendant also owed the plaintiff the duty to gather the body and its fragments and prepare the same for burial, and a negligent failure to do so was an infringement upon her legal rights, and therefore actionable (citing cases). Parts of the body were left along the track, and gathered up by the father on the Monday following.

Respect for the dead is an instinct that none may violate. The democracy of death is superior to the edicts of kings. Rizpah became forever famous among her kind when she defied the King of Israel, who would treat the bodies of her dead with contempt. Sophocles has immortalized Antigone, who vindicated the like sentiment of human nature as a higher law than that of her sovereign. 'It is no answer to such negligence or indifference to say that the defendant did not remove the body from the track because . . . waiting for the coroner. Humanity and decency required that the body and its scattered members should be reverently picked up, and laid off the track in some nearby spot, sheltered by a covering from the sun and flies and dust and irreverent eyes, and protected from the dogs by some better agency than, according to the testimony, the volunteer aid of small boys, attracted thither by curiosity, but who showed more respect for humanity than those who represented this defendant. That there is no right of property in a dead body, using the word in its ordinary sense, may well be admitted. Yet the burial of the dead is a subject which interests the feelings of mankind to a much greater degree than many matters of actual property. There is a duty imposed by the universal feelings of mankind to be discharged by some one towards the dead, a duty, and we may also say a right, to protect from violation, and a duty on the part of others to abstain from violation; it may therefore be considered as a sort of quasi property, and it would be discreditable to any system of law not to provide a remedy to such a case.' *Pierce v Proprietors of Swan Cemetery*, 10 R I 227, 14 Am Rep. 667, *Floyd v Ry Co.*, L. R. A. 1915B, 519.

"It was therefore the duty of defendant, as a matter of common humanity, to

rescue bodies of the victims from the debris as quickly and with as little mutilation as was reasonably possible."

The case of *Hawthorne v Delano*, 167 Northwestern Reporter, 196, passed upon by the Iowa Supreme Court, involved the liability of a railway company for injury to a mother's feelings because the body of her son, after being mangled by a train from which he fell, was permitted to lie on the track for several hours. The suit was partly grounded on a section of the Iowa statutes which reads in part as follows:

"If any person willfully and unnecessarily, and in an improper manner, indecently expose, throw away or abandon any human body, or the remains thereof, in any public place, or in any river, stream, pond or other place, he shall be imprisoned not more than two years, or be fined not exceeding \$2,500, or both."

The suit was also grounded upon the well-settled principle of law that a railway company is liable in damages for knowingly permitting a body to remain on its tracks with trains passing over it, or to submit it to any other indignity.

A trial resulted in judgment in favor of plaintiff, but the supreme court reversed the lower court's decision, holding that the evidence was insufficient to show that the company's employes knew that decedent had fallen from the train or willfully permitted trains to pass over his body as it lay on the track where he was killed. It appears that the accident occurred at night and that the body was discovered the next morning.

SECTION 53. REMOVAL OF HAIR

It is unlawful for a funeral director to remove, or to permit to be removed, hair from the head of a body entrusted to his care for preparation for burial, unless the person entitled to custody of the remains consents, and such act renders the undertaker liable in damages for grief suffered by a bereaved relative in consequence of the wrong. This is the gist of an opinion handed down by the Illinois Appellate Court in *Chicago* (184 Ill App 48), and is well sustained by other judicial authorities on the question of liability for wantonly mutilating a body.

A surviving husband sued a firm of funeral directors who had charge of the body of his wife, asking damages against them on the ground that the firm wrongfully abetted the removal of hair from her head. Defendants defended the suit on the ground that, even if the facts charged were true, there was no cause of action, contending that the husband had no property right in the body and that an award could not lawfully be made on the ground of mental anguish. The Circuit Court at Chicago upheld the defense and ordered the suit dismissed, whereupon the husband appealed to the Appellate Court, which reversed the decision, declaring, in part:

"We apprehend that it would not be very difficult to find good reasons for holding that the right of a surviving husband to the undisturbed possession and control of his wife's remains may well be included in the category of personal rights, as now recognized by the law of this state.

The decided weight of authority in this country supports the proposition that while a dead body is not considered as property, in the ordinary, technical sense in which the word is usually employed, yet the law does recognize a right, somewhat akin, perhaps, to a property right, arising out of the duty of the nearest relatives of the deceased to bury their dead, which authorizes and requires them to take possession and control of the dead body for the purpose of giving it decent burial. The right is an exclusive right to the custody and possession of the remains and, in the absence of any testamentary disposition, belongs to the husband or wife, if any, or, if there be none, then to the next of kin. The greater weight of authority also holds that any willful or wanton infringement of this recognized legal right, by the intentional mutilation of the deceased, will subject the wrongdoer to an action for damages, and in such action damages will be allowed for any mental suffering proximately resulting from the wrongful act, even though no actual pecuniary loss be alleged or proved."

The Appellate Court supports its decision by referring to many similar decisions announced in other states, including Minnesota, Massachusetts, New York, Georgia, Indiana and Missouri.

SECTION 54. STATUS OF SEVERED MEMBERS OF BODY

The right of a widow to recover damages for unauthorized destruction of amputated members of her husband's body was involved in the case of *Doxtator v Chicago & Western Michigan Railway Company*, 79 Northwestern Reporter 922. Deceased was fatally injured while in the employment of the railway company as switchman, and was hurried by representatives of the company to a hospital, where the company surgeon assisted the hospital surgeons in amputating both legs. The severed limbs were burned by a hospital attendant, and the widow afterwards brought suit against

the railway company on the theory that the company was liable for the destruction of the amputated limbs, because it took charge of deceased after the accident. She recovered judgment in the trial court, but the recovery was reversed by the Michigan Supreme Court on the railway company's appeal on the ground that limbs were destroyed without the sanction or knowledge of any representative of the company. The opinion reads in part as follows:

"At the common law there was said to be no property in a dead body, and in one sense this may still be deemed an accurate technical statement; but it has been held in a number of well-considered American cases that the one whose duty it is to care for the body of the deceased is entitled to possession of the body, as it is when death comes, and that it is an actionable wrong for another to interfere with that right by withholding the body or mutilating it in any way. This right is conceded. Another question, not discussed in the original brief of the appellant . . . may be whether, under the facts as claimed by plaintiff, the right of action exists in the widow for the destruction of fragments amputated from the body of her husband during his lifetime As this question was not at all discussed in the original brief, we pass it by. The theory of the plaintiff is that, when the railroad company lifted Doxtator from the ground, it took upon its shoulders a duty, and that duty was to care for him while he should live, and at his death deliver his remains, and the whole of them, over to his wife for burial."

The court found, however, that this theory was incorrect and held that the railroad company's representatives, having taken charge of the deceased before his death, for the purpose of saving his life if that could be done, did not assume any legal responsibility concerning the disposition of the body or severed members left in the charge of the hospital authorities under an assumption that they would be properly disposed of.

Although the Supreme Court made no direct finding to that effect, the whole trend of opinion is toward a holding that destruction of amputated members by burning them is an unwarranted disposition, in the absence of consent on the part of the person who is legally entitled to custody thereof for the purpose of burial.

SECTION 55 UNAUTHORIZED AUTOPSIES, Etc

A funeral director's acceptance of the custody of a corpse for preparation for burial and for its interment places certain legal obligations upon him which should be borne in mind when any third person seeks to interfere with the body, as where it is sought to hold an autopsy.

The general rule of law relating to autopsies has been codified in many of the states, and, as stated in a Minnesota statute, is as follows:

"The right to dissect the dead body of a human being shall be limited to cases specially provided by statute, or by the direction or will of the deceased, cases where a coroner is authorized to hold an inquest upon the body, and then only so far as he may authorize dissection, and cases where the husband, wife, or next of kin, charged by the law with the duty of burial, shall authorize dissection for the purpose of ascertaining the cause of death, and then only to the extent so authorized. Every person who shall make, cause, or procure to be made any dissection of the body of a human being, except as hereinbefore provided, shall be guilty of a gross misdemeanor."

Under such a statute it must be quite clear that a funeral director who aids an unauthorized dissection, not only renders himself liable to a civil suit by the aggrieved relatives of deceased, but subjects himself to prosecution.

In an interesting case passed upon by the Iowa Supreme Court (*Winkler v. Hawkes & Ackley*, 102 Northwestern Reporter, 418) plaintiff, a widow, was denied the right to recover damages for what she claimed was an unauthorized dissection of her husband's body. The suit was brought against the funeral directors in charge of the remains and surgeons who performed the autopsy. The defense successfully interposed was that the examination and dissection were conducted in an orderly and scientific manner, with plaintiff's consent, to ascertain the cause of death. In affirming judgment in defendant's favor, the court said:

"The [trial] court submitted to the jury the question whether the plaintiff consented to the post mortem examination of the body of her husband, and it is argued that there is no competent evidence upon which consent could be found. We think otherwise. Indeed, the plaintiff's own testimony clearly shows that she did consent, and that the point of her subsequent objection was that the surgeons took away some of the parts or organs of the body. It fully appears that she understood the purpose of the examination was to ascertain the cause of her husband's death, and that she consented to it for that purpose. That consent being given, we think that it must be held to imply a permission to the surgeons to conduct the examination in

the approved and usual manner practiced by their profession; and, if the removal of some of the organs for microscopic examination was necessary or proper to effect the purpose of the post mortem, then the defendants would not be guilty of actionable wrong in so doing, unless such permission was expressly withheld at the time the consent to open the body was given. It is true that Mrs Winkler claims that she made it a condition of her consent that none of the parts should be taken away, but that question was submitted to the jury, which evidently found against her contention in this respect. Moreover, the condition that none of the parts should be taken away did not necessarily prohibit the taking of such parts to the office of the surgeons for examination, if they were duly returned and replaced for burial, and this appears to have been done. The fact seems to be that the surgeons removed the heart and liver, in whole or in part, from the body, and took them from the undertaker's room for further examination; and, upon hearing that the plaintiff objected thereto, the parts were at once returned and buried with the body. There is no indication that the surgeons acted otherwise than in entire good faith, and we believe their acts in the premises were fairly within the scope of the consent which plaintiff concedes she gave. But however this may be, this feature of the controversy was submitted to the jury under instructions which were very favorable to the plaintiff, and we are not disposed to interfere with the verdict."

A decision announced by the Iowa Supreme Court in the case of *Konecny v Hohen-schuh*, 173 Northwestern Reporter, 901, bears on the liability of a funeral director where an unauthorized autopsy is held over a body in his custody. The decision exonerated defendant from liability to plaintiff on account of an autopsy held over the remains of plaintiff's mother while in the defendant's custody, it appearing that defendant had no intimation that the autopsy was being conducted without proper consent.

Defendant was entrusted by the State University Hospital of Iowa with the body for preparation for burial, and plaintiff alleged in his suit that without his knowledge or consent defendant permitted the body to be dissected and mutilated, in reckless and malicious disregard of plaintiff's right to receive the remains in the condition in which they were when life had departed therefrom. It was further alleged that this wrong against plaintiff had caused him great mental suffering, for which he demanded compensation in money.

The answer which was filed by defendant, and which is found by the court to have stated a complete defense, averred that the body had been delivered to him by authorities of the State University Hospital with directions to embalm it, and with information that the hospital's surgeons would make a post-mortem examination. It was further set forth in the answer that defendant had no knowledge of the identity of the deceased person, was not present at the autopsy, and had nothing whatever to do with it; that the deceased was in part a county patient, and admitted to the hospital as such, and that the staff of the hospital had the right to make the examinations. It was further alleged by defendant that he was informed that plaintiff had consented to the autopsy, and that the same was conducted in a decent and proper manner.

The evidence disclosed that it was customary for the hospital staff to hold autopsies upon the bodies of patients dying at the hospital, whenever the consent of the family or friends of the decedents could be obtained. Such examinations were in fact held in perhaps three-fourths of the cases of deaths occurring at the hospital. The hospital did not have suitable rooms or conveniences for such work, and bodies were customarily sent out to the undertaking establishments of the city—Iowa City—where the staff would conduct its examinations.

In this instance defendant sent an assistant to the hospital to obtain the body at the request of an official in charge of the hospital. The assistant embalmed the body. Later, members of the staff went to the undertaking rooms, opened the body and removed some of the viscera for examination. Neither defendant nor any representatives of his were present.

Before the examination had been completed plaintiff called at the establishment with another undertaker and requested delivery of the body. Defendant explained that an autopsy was being held, but readily yielded to plaintiff's insistence that the remains be delivered to the other undertaker at once.

At the close of the trial the presiding judge ordered the jury to bring in a verdict in defendant's favor, on the ground that the evidence showed that he was not liable. Plaintiff appealed to the Supreme Court, where the ruling was affirmed, the higher court saying, in part:

"Appellee's (defendant's) counsel concede that, if the post-mortem examination of this body was made by the physicians without plaintiff's consent, the act constitutes a legal wrong for which the law affords a remedy. It is also conceded that the fact whether such consent was given is in dispute, and that if the question be a vital one in this case

the issue should have been submitted to the jury. They contend, however, and that is the question with which we have to deal, that, even assuming that no consent is proved, the record still makes no case against the defendant, and with that view we are disposed to agree.

"There is no evidence fairly tending to show that defendant was present at, or assisted in, or took part in, the autopsy. The most which can be said in this respect is that it took place in his building, and that he knew such examination was contemplated by the physicians, and that it was being performed on his premises. If such examination was wrongful, and he with knowledge of the wrong furnished the perpetrators a room or place or conveniences for its performance, such aid and assistance might well be held sufficient to charge him with participation in the wrong and therefore with joint liability. But the doing of an act which is in itself perfectly lawful will not render one liable as for a tort, simply because the unintended effect of such act is to enable or assist another person to do or accomplish a wrong. The defendant had an unquestionable legal right to maintain a building or place in which to do business as an embalmer or undertaker. He had just as clear a right to permit the hospital and its physicians to use a room in his building as a place for holding post-mortem examinations. He could reasonably and properly assume that the hospital authorities and its medical staff would not abuse such privilege, by using it for an unauthorized autopsy. He was charged with no duty to supervise such use, or to ascertain at his peril in each instance whether proper consent had been obtained for the examination of a body brought or sent to his place by the hospital itself.

"The record is barren of any testimony tending to show guilty knowledge or unlawful purpose or intent on part of defendant, and in our judgment it must be said there is a failure of proof of any act of omission on his part rendering him justly chargeable with damages for the wrong, if any, committed by the physicians. His only connection with the transaction was to receive and embalm the body, a very proper service, which is not the ground of complaint in this action. He received the body from the hospital, and until some one appeared disclosing a better claim of right or authority to control its care and disposition, he cannot be charged with wrong in recognizing the authority of the hospital to give directions for its care and keeping."

A decision bearing on the liability of a funeral director for mutilation of a body in his possession, in the performance of an autopsy by third persons, or through any other act for which the funeral director is not at fault, was handed down by the Appellate Division of the New York Supreme Court, in the case of *Hasselbach v. Mt Sinai Hospital*, 159 New York Supplement, 376.

The suit was brought against a hospital on account of an authorized autopsy claimed to have been held on the body of plaintiff's husband after he died in defendant's hospital, but what the court decided would fully apply to a question arising on an autopsy performed on a body in a funeral director's custody for preparation for burial, or on account of any injury not shown to have been caused by the funeral director's own negligence or wrongful act. In holding that plaintiff's complaint did not state a cause of action against the defendant, the court rested its decision on the fact that the complaint did not allege that the autopsy was performed by the defendant, or any of its employees, or with defendant's knowledge or consent. The court said:

"The question is therefore presented whether or not the defendant owed an absolute duty to plaintiff to protect her husband's body against post mortem autopsy by any person whomsoever, and to deliver the body to her in the same condition that it was in immediately after death. The plaintiff insists that defendant was under such duty. We do not so understand the law. Certainly no reported case has gone to this extent.

"It is well settled that, in the absence of a contrary testamentary disposition, the right to the possession of the body of one who has died belongs to the husband or wife or next of kin for the purposes of preservation and burial, and that this right is infringed upon by anyone who unlawfully mutilates such body without the consent of the person entitled to possession thereof, . . . and for a violation of this right damages may be recovered for the injury to the feelings and the mental suffering resulting from the unlawful act. In all the cases, however, in which such a right of action has been upheld, the person held liable has either been the one who committed the unlawful act, or one who caused or procured the autopsy to be made."

The court held that there was nothing to help plaintiff, in the provisions of the New York statutes which make it a misdemeanor for one to make, or cause to be made, any dissection of the body of a human being, except by authority of law, or under permission given by the deceased, since there was nothing to show that defendant made or caused the autopsy to be made.

There is a general rule of law that when an article of personal property is entrusted by the owner to another person, in an undamaged condition, and it is returned in a dam-

aged condition, the burden is on such other person to show that the injury did not occur through his negligence or wrongful act. It was sought to apply this legal principle by analogy, but the court said that the principle rested on the fact of injury to property; and that there is no such thing as property rights in a dead body, in the ordinary commercial sense. "The damages allowed to be recovered for its mutilation are never awarded as a recompense for the injury done to the body as a piece of property," said the court. "No obligation is imposed upon the defendants, except to refrain from actively participating in the unlawful mutilation of the body. To go further would be to charge it as an insurer, and to hold it to an even stricter accountability than would be imposed upon a custodian of merchandise."

The following statement contained in a standard legal work recently issued will serve to throw light on the liabilities on account of autopsies:

"The general rule is that the unauthorized autopsy of a deceased person's body is a tort (wrong), giving rise to a cause of action for damages. A physician making an autopsy with the consent of the person entitled to the right of sepulture is not liable to an action for damages. It has been held, on the one hand (by the Minnesota Supreme Court) that it is no defense to an action for damages resulting from an autopsy on a body without the consent of the next of kin that defendant, the attending physician, performed the autopsy to ascertain the cause of death so as to be able to certify it as required by statute. On the other hand, it has been held (by the courts of Colorado, Georgia and Kentucky) that an autopsy performed by a physician in accordance with the law, in order to obtain a certificate of burial from the board of health, does not render the physician liable in an action for damages, where it is performed in a proper manner, although without the consent of the person having the right of sepulture; and that such an autopsy does not render an undertaker having charge of the body liable for permitting the examination to be made. But an undertaker who has taken charge of a body at the request of persons entitled to its custody and who afterward permits physicians to make an unauthorized autopsy is jointly liable with the physicians. Where an attending physician made an incision in the body shortly after death to ascertain the exact cause of death, there being no dismemberment or removal of any part or organ, it is not such mutilation of the body as to give the widow of deceased a cause of action.

"The authority of a coroner to ascertain the cause of death must be exercised in a proper manner. If an autopsy is performed by a physician under the direction of a coroner in a proper manner, the physician is not liable for dissecting the remains; and the issuance and service of a subpoena on the physician is not indispensable as a direction to make an autopsy. If, however, the coroner's physician who is authorized to make an autopsy on the remains when directed by a coroner proceeds to do so without any direction, he is liable for an action for the unlawful dissection. Furthermore, although an autopsy may be authorized by a coroner, this does not justify the removal and detention of any organs of the deceased by the coroner's physician, in the absence of a further direction. When there is a statute requiring all citizens to report deaths of a suspicious nature to a coroner, it is necessary that the report be false in order to render a person liable for a dissection made by coroner on his report.

"Where the remains of a deceased husband or wife are unlawfully mutilated, the surviving spouse is entitled to maintain an action for damages. In the absence of surviving spouse, a son is the lawful custodian of the body of a deceased parent for preservation and burial, and hence may maintain an action for an unlawful mutilation of the body. The father of a child, who is its natural guardian, has such right to its dead body that he may maintain an action against one to whom he entrusted the child for treatment, and who, without his consent, performed an autopsy on the dead body. So a mother legally entitled to the possession of the corpse of her son may recover of one illegally dissecting or otherwise mutilating the remains. The personal representative of decedent cannot maintain an action for damages for the willful or negligent mutilation of decedent's body, although he may sue for injury to the wearing apparel of decedent and property on his person." 17 Corpus Juris 1144.

SECTION 56 AUTOPSY ORDERED BY CORONER

In denying the right of a widow to recover damages against a college of physicians and surgeons for holding an autopsy over the remains of her husband, who died in a city hospital after having sustained injuries in a railroad accident, the Maryland Court of Appeals recognized the right of coroners to order autopsies to be made when, in their judgment, that is an appropriate means of ascertaining the cause of a person's death, although consent of the surviving relatives be not obtained. (32 Atlantic Reporter, 177.)

In this case it appeared that a man in vigorous health, whose leg was crushed below the knee in a railroad accident, was carried to a hospital managed by one of the defendants, where he died the next day. The coroner was notified, and considering that

the accident was not of itself sufficient to cause death, he ordered a post-mortem examination to be made. This was accordingly performed without the knowledge of the family of deceased. The widow's right to recover damages was denied on the following grounds: (1) That the coroner had authority to order autopsies to be made, and there was no evidence to show that in directing this one to be made he acted maliciously or corruptly. (2) That the surgeon was there likewise not liable if he performed the post-mortem by order of the coroner, and did so without wantonly mutilating the corpse. (3) That the hospital authorities, having no further connection with the matter than to allow their rooms to be used, were not liable.

The court held that in the trial of the case it was proper for a funeral director to testify as follows: "I never received a body from the hands of the coroner or where a post-mortem examination had been made, that was in a condition for the family to see without being prepared." The Court of Appeals says: "We cannot see any objection to proving this fact; it might also be inferred from common knowledge that the use of the surgeon's knife would disfigure the human body and give it an appearance which would shock the sensibilities of the family of the deceased."

SECTION 57 WHO MAY COMPLAIN

In the case of *Floyd v. Atlantic Coast Line Railway Co.*, 83 *Southeastern Reporter* 12, plaintiff sued defendant for claimed mutilation of her son's body after he had been killed by one of defendant's trains. In denying plaintiff the right to recover, the North Carolina Supreme Court held that the right to dispose of the dead body by decent burial includes the right to its possession in the same condition in which death left it, and the mother of a minor unmarried son whose dead body was negligently mutilated, if the proper party to sue, is entitled to recover damages therefor, but that, under the statutes of North Carolina, the father, in view of his primary rights and liabilities, such as the right to services, the liability for support, burial expenses, etc., is to be preferred to the mother, and owns the cause of action of negligent mutilation. Therefore, it was decided that the mother had no right to sue in her own behalf.

The same rule it seems to be applicable to a suit against a funeral director or embalmer for mutilation of the remains of a minor unmarried child.

The Nebraska Supreme Court determined that, under the facts of a case presented to it, a brother of a deceased person was not entitled to maintain an action for damages against persons who mutilated the body in performing an autopsy without his consent. It appeared in this case (*Thompson v. Pierce*, 146 *Northwestern Reporter* 948) decedent was married, but that he and his wife had been living apart from each other for several months preceding his death, although they were not divorced. The body was under the care of plaintiff, the brother. In deciding that the action could not be maintained by plaintiff, the court finds that there was nothing to show that the widow had surrendered her right to the control of the remains. The most important part of the opinion reads as follows: "The courts of the United States generally recognize the right of the surviving spouse or next of kin of a deceased person to the care, custody and control of the remains for the purpose of sepulture. The point in dispute here is whether the surviving wife or the brother of the deceased is entitled to maintain an action for wanton mutilation of the corpse. As between the wife and other relatives, the great weight of authority is that the care and custody of the body and the right to provide a place of burial rest in the first place with the surviving spouse. The right of the surviving husband or wife, or, if there be none, of the next kin, to have the custody of the deceased person and decide upon the place of its final burial is supported by the better reasoning and by the almost unanimous voice of the authorities. There are, of course, exceptions, as there are to nearly all general rules, but they arise for the most part out of such circumstances as would deprive a natural guardian of the custody of a living child."

SECTION 58. DISPOSITION OF UNCLAIMED BODIES

Statutes of the several states commonly provide for delivery of the bodies of those subject to burial at public expense, excepting those of honorably discharged soldiers, sailors, etc., to medical schools for the advancement of medical and anatomical science. And by several statutes this provision is extended to embalming schools and state embalming boards, for the advancement of the science of embalming. Some of the statutes expressly provide that bodies shall not be subject to these statutes if the deceased requested burial, or if kindred or friends require burial. And it is generally enjoined that after dissection the body shall be decently buried by the institution having it under control. Typical statutory provisions are shown in the following review of a New York decision.

A decision handed down by the New York Supreme Court in the case of *Burke v. New York University*, 179 New York Supplement, 626, involved the liability of one in possession of an unclaimed body for permitting it to be dissected in a medical college. Plaintiffs failed to make out a case against defendant university for damages for dissecting plaintiff's deceased father's body. The complaint in the case averred that the death occurred at a hospital on Blackwell's Island, that the body was removed to the Manhattan morgue, that ten days later a death certificate was issued, and permit granted for burial in the city cemetery; but that, instead of being so buried, the body was received by defendant, dissected, and then cremated. It was further alleged that plaintiffs never consented to this disposition of the body, and that they had left their address against the possibility that something might happen to their father. Dismissing the suit, the court held that under the laws of New York the university had not been derelict in failing to take proper steps to ascertain the existence of surviving relatives. Although the decision turned on the particular phraseology of the New York statutes, it will prove of general interest because of the existence of similar statutes in several other states. The New York Health Law contained the following provisions:

"Sec 316. Cadavers—The persons having lawful control and management of any hospital, prison, asylum, morgue or other receptacle for corpses not interred, and every undertaker or other person having in his lawful possession any such corpse for keeping or burial may deliver and he is required to deliver, under the conditions specified in this section, every such corpse in their or his possession, charge, custody or control, not placed therein by relatives or friends in the usual manner for keeping or burial, to the medical colleges and universities of the state authorized by law to confer the degree of doctor of medicine, and to all other colleges or schools incorporated under the laws of the state for the purpose of teaching medicine, anatomy or surgery to those on whom the degree of doctor of medicine has been conferred, and to any university of the state having a medical preparatory or medical post-graduate course of instruction. No corpse shall be so delivered or received if desired for interment by relatives or friends within forty-eight hours after death, or if known to have relatives or friends, without the assent of such relatives or friends, or of a person who shall have expressed a desire in his last illness that his body be interred, but the same shall be buried in the usual manner."

"It will be observed," says the court, "that the statute not only permits, but in certain cases requires, morgues and other institutions and persons named to deliver any corpse in their possession not placed there by relatives or friends for keeping or burial to medical institutions like the defendant. The statute prohibits such delivery or receipt, however, of the corpse of any person 'known' to have relatives or friends, without the assent of such relatives or friends. I think this demurrer can be decided upon the question whether or not the complaint sufficiently alleges that the corpse in this case was of a person 'known to have relatives or friends.' I take it that these words necessarily mean known to the institution charged with wrongful receiving of a corpse, or, what is tantamount to knowledge, lack of reasonable inquiry."

"I cannot see in the complaint before me any allegations which can fairly be construed as charging such knowledge or such lack of inquiry to the defendant. It is true the complaint does allege that the plaintiffs 'had left their address in order that they might learn if anything happened to their father or of his death,' but it is not stated with whom they left their address, or when they left it. If anything can be inferred on this point, it is that the address was left with the hospital where their father was. Certainly it cannot be inferred that it was left with the defendant, or that it was brought to the defendant's attention. I am consequently of the opinion that there is no plausible ground for arguing that the complaint alleges knowledge on the defendant's part. Whether there is any sufficient ground for holding that the facts alleged show lack of proper inquiry is not so plain. Since the plaintiff's address was left with the hospital, there was a clue which the defendant might have followed up, and by which it might have obtained knowledge of the plaintiffs and their relationship. The question is whether the defendants ought to have done that. In this connection it should be observed that the section of the statute above quoted contains this further provision, viz.,

"Any such medical college, school or university desiring to avail itself of the provisions of this section shall notify such persons having the control and management of the institutions and places heretofore specified, and such undertakers and other persons having any such corpse in their possession, custody or control . . . shall notify the proper officers of such college, school or university whenever there is any corpse in their possession, custody or control, which may be delivered to a medical college, school or university under this section, and shall deliver the same to such college, school or university'

"This seems to place upon the persons having control of the institutions mentioned and having possession of such corpses the duty of ascertaining whether any particular corpse is one 'which may be delivered under this section'

"The persons so in control in this case were those who had charge of the morgue, and the statute would appear to have placed upon them the duty of making inquiry to ascertain whether the particular corpse was that of a person 'known to have relatives or friends' Since it was their duty to make such inquiry, it is not apparent that any useful purpose would be accomplished by requiring the defendant to make the same inquiry over again, and, in the absence of plain language to that effect, the statute should not be held to have intended such duplication of inquiry"

SECTION 59 UNAUTHORIZED CREMATION

Where a statute permits delivery of an unclaimed body to a medical school for dissection only when there are "known relatives," due diligence must be used to ascertain the existence of relatives, and where a law provides for "burial" after dissection, cremation without the consent of surviving relatives is an actionable wrong, holds the New York Appellate Division in the case of *Burke v New York University*, 188 New York Supplement, 123

The question presented was whether the complaint sufficiently alleged a cause of action It was alleged That the plaintiffs are the only next of kin, the sons and daughters of one John Barry, and that he died on the 19th day of December, 1917, and at the time of his death he was in the Central Neurological Hospital, on Blackwell's Island, and his body was transferred on that day to the morgue in the city of New York That on the 29th of December a death certificate was filed in the health department and a burial permit for burial in the City Cemetery on December 29, 1917. On that date the body was not buried, but was turned over by the authorities at the morgue to the defendant corporation This was a corporation authorized to receive the body under certain circumstances under the statute that will be referred to It was held by them until February 19, 1918, at which time the body was dissected and the remains cremated It was further alleged That the plaintiffs were left in ignorance even of the death of their father, and upon ascertaining the fact they demanded the body, and were informed that it had been disposed of That they never gave any permission or consent to the dissection of the body, and the complaint alleges that such dissection and destruction of the remains were unlawful acts of the defendant It was further alleged that they left an address where they might learn anything that happened to their father It does not allege where his address was left It is alleged that they were Catholics, and that they were forbidden from interring the remains of their father in consecrated ground, and the feelings of the daughter and sons were outraged, and they were greatly shocked and were greatly outraged in their religious feelings in respect to the mutilation and destruction of the corpse of their father, and \$25,000 was demanded.

The trial court sustained a demurrer to the complaint and plaintiffs appealed. On the appeal the Appellate Division reversed the lower court, saying

"The defendant claims its right to dissect under section 316 of the Public Health Law (Consol Laws, c 45), which requires any hospital or morgue having any uninterred corpse in its lawful possession for keeping or burial, which has not been placed therein in the usual manner by relatives or friends for that purpose, to deliver such corpse under specified conditions to any university of the state having a medical preparatory or medical post-graduate course It is provided, however, that

"No corpse shall be so delivered or received if desired for interment by relatives or friends within forty-eight hours after death, or, if known to have relatives or friends, without the assent of such relatives or friends, or of a person who shall have expressed a desire . . . that his body be interred, but the same shall be buried in the usual manner'

"The Special Term held that the primary duty of endeavoring to ascertain whether there were relatives or friends rested with the authorities at the morgue, and did not rest with the defendant before receiving this corpse for dissection I think, however, that there is also an obligation upon the medical school or university to make reason-

able inquiry There is no allegation in the complaint that they failed to make reasonable inquiry.

"The contention of the plaintiffs is that all that was necessary to do was to allege a dissection without their consent, and that it was for the defendant to plead the facts which justified such a dissection. This contention is, I think, well made. The dissection of a human body without the consent of the relatives or friends is under the common law a wrongful act. If the defendant would justify that act under any special statute, the facts would bring the defendant within the statute and authorize the act. The act is properly pleaded as an affirmative defense. Those facts need not be negatived in the complaint, which is sufficient if a wrong under the common law has been alleged.

"Irrespective, however, of the statement of the cause of action for the dissection, the complaint states a cause of action for the cremation of the body. Under section 2215 of the Penal Code, it is provided that after dissection the body shall be buried. The cremation of the body was therefore clearly a wrongful act, and is, I think, just as actionable as the dissection itself."

SECTION 60 INSURANCE COMPANIES' RIGHTS

When a life or accident insurance policy contains a provision entitling the insurance company to have an autopsy held to determine the cause of insured's death, if demand be made therefor, demand must be made within a reasonable time, according to the decision of the Minnesota Supreme Court announced in the case of *Johnson v. Bankers' Mutual Casualty Co.*, 151 Northwestern Reporter, 413.

Insured under an accident policy was drowned while bathing in a lake, June 15. The next day his body was recovered, and the day after the claim auditor of the insurance company was notified of the accident. The evening of the 17th the auditor arrived in the neighborhood where deceased had lived, and, although some investigation was made by him, he made no demand for an autopsy until after 10 a. m., the 18th—less than three hours before the time set for the funeral. The policy contained a clause to the effect that the policy should be void if an autopsy by the company's medical adviser should be denied, no time for demand being specified. Insured's widow refused to defer the funeral to afford opportunity for an autopsy, and the company refused to pay the amount called for by the policy. In a suit on the policy, the Supreme Court decided that the insurance company waived its right to an autopsy by waiting until the eleventh hour to demand the same, especially since the company then had no medical adviser present to conduct the autopsy, which would have been delayed awaiting his arrival from a city some distance away. The court holds that under such circumstances the bereaved relatives should be spared the "distressful experience of an autopsy" and "the harrowing ordeal of a suspension of the funeral."

Provision in a life insurance policy that "any medical adviser of the association shall be permitted to examine the person or body of the insured in respect to any alleged injury or cause of death, when and as often as may be required by the association, and, in the case of a post-mortem examination by or on the part of the insured's representatives, the association shall be given opportunity to attend and participate," only authorizes an inspection of the body while it remains unburied, and does not mean that the association may have the body exhumed. Nor does a clause in a policy to the effect that the insurance shall not extend to injuries of which there is no visible mark, or cover accidental injuries or death resulting from certain specified causes, entitle the insurer to make an autopsy, on the ground that something might be found which would exempt liability under the policy. (31 New York Supplement, 865)

CHAPTER XVI

CONTRACTS FOR SERVICES AND SUPPLIES

NOTE—See, also, chapters on Burial Benefit Associations (XVIII) and Liability for Funeral Expenses (XVII)

SECTION 61 IMPORTANCE OF HAVING SPECIFIC CONTRACT

The importance of reducing to writing orders for a funeral director's services, burial supplies, etc., is obvious. It forestalls disputes as to the liability of the person who signs the order for the amounts charged. And yet funeral directors are prone to furnish supplies and services without understanding as to who is to make payment. An Indiana funeral director recently wrote that funeral arrangements were made by a surviving husband, brother, father and cousin, and, nothing being said as to who should pay, he charged the bill to the "whole bunch." But, unfortunately, the law does not sanction such "tag-you-are-it" practice.

SECTION 62 CAPACITY OF FUNERAL DIRECTOR

A few years ago the judge of a court in New York City said:
"A mourner is generally a person greatly agitated or overwhelmed by vain regrets or deep sorrow, and on the other side persons whose business is to administer to the dead for profit. One side is, therefore, often businesslike, vague and forgetful, while the other is ordinarily alert, knowing and careful. . . . The average undertaker in this city [New York], as it appears from the testimony, is in reality only a middle man or contractor. Nearly all the actual material, labor and necessities for the average funeral are furnished by the great establishments. It is the latter who really furnish the coffin, the hearse, and most of the other material employed between the death and the grave. Such establishments have a fixed schedule of very moderate prices. To this prime cost such undertakers, as it is sworn on the stand, usually add what they can get out of the family. That even where there is no express contract the undertaker is entitled to add something for his costs and services is apparent. I think even his rent telephone and individual business establishment which he maintains ought to be fairly taken into final account. But that in such cases he is only an agent is apparent. If he is to be regarded as the agent of the dead person's family, his status of trust precludes his making a profit beyond his services. If, on the other hand, he is the agent of the great funeral establishment, his legal position may be somewhat different. These are extremely nice questions of law, and just here I think I detect indications of a way by which relief from excessive charges may be afforded to these poor families, at least in those instances where there is no express contract. But I am not without doubts on many points. There is much room for discussion and full consideration as I do not wish to be unjust to the undertaker and make any unwarranted assumption."

SECTION 63 FORM OF CONTRACT

We approve use of some such form as appears on the next page.

A briefer form of guaranty is as follows:

"....., Iowa,, 192....
"To John Jones,, Iowa.
"In consideration of your furnishing services and/or supplies in connection with preparing for burial and burying the remains of, I, or we, hereby guarantee payment of on or before, 19 .., your bill in a sum not exceeding \$.., for services and/or supplies furnished on order of,
"....."
Or, if it is definitely known in advance just what all the items of the bill will be, it would be proper to make up an itemized bill against the person who is to pay the same, and have him or her sign a statement at the bottom worded something like this.
"I (or we) agree to pay the above bill on or before, 192...., in consideration of the above items being furnished in connection with the burial of the remains of Dated this, 192...."
"....."

Or, it would be proper to have the person who is to be bound sign an ordinary promissory note.

THE LEE MORTUARY

R P LEE, Proprietor
1428 Nicollet Avenue, at W 15th St
MINNEAPOLIS, MINNESOTA

ORDER FOR FUNERAL SERVICE

Minneapolis, Minn ,

192

TO THE LEE MORTUARY

Please prepare and care for the body of
deceased, for interment—shipment—
cremation and provide the items listed below at the prices quoted in
the margin opposite the respective items

EMBALMING

CASKET

BURIAL CLOTHING

SHIPPING BOX OR VAULT

PROFESSIONAL SLRVICES

LIVERY EXPENSE

Ambulance

Hearse

Limousines

CEMETERY EXPENSE ADVANCED

ADDITIONAL EAPENSE

Flowers \$, Telephoning \$, Telegraphing \$
Transportation \$, and other miscellaneous items

For the above items aggregating \$
agree to pay you as follows

\$	on or before the	day of	192
\$	on or before the	day of	192
\$	on or before the	day of	192
\$	on or before the	day of	192

and the balance \$ on or before the day of 192
with interest on all deferred payments at the rate of 8% per annum,
until paid, and further agree to pay for any additional items
or service not included in the above which may order, or
direct you to furnish and to be included in bill for the above items

We and for
and in consideration of \$1 and other valuable consideration to us in
hand paid, the receipt whereof we hereby acknowledge, do hereby
guarantee that the above named
and will promptly make the payments
mentioned in the foregoing order, when and as the same shall become
due

Date 192

The foregoing order and guarantee taken and approved by me this
day of 192

SECTION 64 AUTHORITY TO MAKE CONTRACT

"Will you kindly give an opinion on the following: A man dies in hospital and authorities call an undertaker who embalms body. As soon as family is notified, they ask another undertaker to go to hospital and get body. Can embalmer No. 1 collect for work he has done without the sanction of the family?" recently inquired a funeral director

A definite answer depends upon undisclosed facts in the case. If the deceased man's next of kin were close at hand and there were no circumstances making it necessary to have the body embalmed instantly, or before the relatives could obtain an embalmer of their own choice to prepare the remains, the act of the hospital authorities in presuming to invade the privilege of the relatives to govern all the burial arrangements was unwarranted and embalmer No. 1 has no valid claim against the decedent's estate or those legally liable for the burial expenses. This conclusion necessarily follows from well established principles of law which give to the next of kin of a deceased person exclusive right to make all funeral arrangements, except as the decedent may have left some directions on the subject.

The only condition which could justify the hospital authorities in making a selection of a funeral director would be the absence of relatives, or their neglect to take reasonably prompt steps to provide for embalming.

Not long ago one of the appeal courts in Texas recognized the rules of law applicable in cases of this general kind.

A man died with his wife absent from the place. His friend in charge of the body selected a funeral director to conduct the funeral. The latter embalmed the body and placed it in an expensive casket selected by the friend. Embalming could not be postponed until the arrival of the wife, but there was no necessity for selecting a coffin, or for placing the body in it before she would probably and did arrive. When she arrived she selected another funeral director and coffin. Under these facts, the court held that the first funeral director had a valid claim for the reasonable value of his services in embalming the body, but that the widow was within her rights in rejecting the coffin and in having another funeral director conduct the remaining funeral arrangements.

The court decided, as it has been held in other cases, that one outside a deceased person's relatives can not incur expense against his estate or them, unless the circumstances are such as to require immediate caring for the body as a matter of decency and sanitary precaution.

Should I die while a guest at a hotel, leaving such information as would enable the hotel authorities to communicate with my wife and secure her immediate presence, before embalming should become necessary, it would be a legally wrongful as well as impertinent act for the hotel authorities to try to divert business to a favored funeral director by making funeral arrangements which could well await arrival of my wife. Should several hours or longer elapse before her arrival, it would, no doubt, be permissible to turn my remains over to a funeral director, but there would be no right of either the hotel management or that funeral director to incur expenses against my estate or my wife beyond that fairly required by the circumstances. The same rule would apply to a friend at whose house I might die while visiting apart from my wife. It would be that friend's right and duty to take all steps necessary to preserve my body pending arrival of my wife, and he could, should her arrival be somewhat delayed, ask a funeral director to take charge of my remains, but could not incur valid expense, excepting as against himself, in making arrangements properly within my wife's province. The underlying reasons why a hospital has no implied authority to employ funeral directors, excepting in practical necessity are the same. When a hospital patient dies in the institution, all services the hospital was employed to render are ended, and the next of kin are entitled to the possession of the body, without any unreasonable interference with their privilege of selecting the persons who shall preach the funeral sermon and handle the body to the grave.

Since one who has not been clothed with authority to act as another's agent cannot bind such other person by engaging services or buying supplies, it follows that a funeral director who renders services on request of hospital authorities or other persons not entitled to the custody of a body for the purposes of burial does so at his own risk. To enforce a claim against the estate or next of kin, he must be able to show that the person employing him was either authorized to do it or by reason of absence of relatives of the deceased was entitled to make the contract, under the rules above stated.

SECTION 65. LIABILITY ON VERBAL PROMISE TO PAY

Fox & Weeks, funeral directors and embalmers at Savannah, Ga., won a case before the South Carolina Supreme Court, involving their right to hold the daughter of a deceased person liable on a verbal promise to pay for funeral supplies and services furnished by the Savannah firm in the burial of deceased. (*Fox & Weeks v. Laney*, 92 Southeastern Reporter, 1044.)

When the firm sued, the principal defense interposed was that there was no written promise to pay and that the case was governed by the law which provides that one person shall not be held liable on a promise to pay another's debt, unless the promise be in writing. But the court disposes of this defense by showing that where credit is extended in the first instance to the person sought to be held liable, the law does not apply. In other words, if a funeral director furnishes supplies and services to inter A's body on the understanding that B, A's relative or friend, will pay the bill, the promise to pay will be valid although not in writing, for B is not guaranteeing payment of any third person's debt. But if the funeral director furnish supplies and services on the credit of C, and later B should agree to pay the account, the promise of B would be within the terms of the law and unenforceable unless in writing.

Although the law is well settled on these points, there is so much misunderstanding, even among attorneys, that the safest course for the funeral director is to get a written promise of payment of his charges from the person to whom credit is extended, whenever this can be done conveniently. In this way, the promisor is precluded from denying his promise and any possible quibble over the legal necessity for a written promise is avoided.

SECTION 66. LIABILITY FOR BREAKING CONTRACT

"An action will lie for the breach of a contract as to the care and burial of a dead body. Accordingly, where a person agrees to bury a corpse properly, a right of action lies if he negligently allows the body to be taken from his custody, or suffers indignities to be offered it while in his possession, or gives it improper burial." This statement of law at page 1143, 17 Corpus Juris, a standard legal authority, is supported by citations given to decisions of the appellate courts of Alabama, Indiana, New York and Washington.

In a decision handed down by the Alabama Court of Appeals in the case of *Reid v. Loy*, 65 Southern Reporter 855, the right of a parent to recover damages for mental anguish sustained through a funeral director's breach of contract to embalm the body of plaintiff's child was upheld. It was further held that in order to recover such damages the parent need not show that any direct contract was made before the undertaker took charge of the body. On this latter point, and referring to the fact that plaintiff's complaint did not directly state that "the plaintiff entered into a contract with the defendant under which it became the duty of the defendant to embalm the dead body of the plaintiff's child," the court says: "But it does aver that, after the defendant (through his authorized agent) represented to the plaintiff that he had embalmed the body of the child and made a charge for the service, the plaintiff ratified the performance of this service by 'then and there' paying the charges demanded for it. If the service was rendered by the defendant without the request or knowledge of the plaintiff, there was no obligation upon him to pay for it, and he could not have been held liable therefor, as one cannot, except in specially exceptional cases, make another his debtor against the will of the other party. But a contract may be formed by an acceptance of the service rendered with knowledge of the performance, although no request had been previously made for a rendition of the service. Under such circumstances a contract between the parties is implied. The complain under which plaintiff recovered judgment, which was affirmed by the Court of Appeals, stated that one of defendant's employees represented that the body had been embalmed, that plaintiff paid \$7.50 for such service; that the employee represented that the body could be safely withheld from burial several days, but that in fact the body had not been embalmed, and that as a direct result the day following the body began to decompose and foul odors arose therefrom, and that plaintiff suffered great mental and physical pain and anguish and great inconvenience and annoyance in and about hurrying up arrangement for the burial, and was greatly mortified at the sight of the dead body of his child so decomposed."

A decision of the Texas Court of Civil Appeals reported at page 576, 74 Southwestern Reporter, shows that it may prove to be an expensive thing for an undertaker to unconscionably fall down on a contract to furnish funeral supplies.

A man died of small-pox in a pesthouse near a Texas city, and his surviving relatives appointed a committee to call upon defendant funeral directors, to purchase a coffin and robe. This they did, bargaining for a casket having the appearance of mahogany or walnut at a price of \$25, and for a \$3 robe. Those in charge of the pesthouse

furnished measurements to defendants for the coffin. Defendants agreed to furnish a coffin with silver handles and breast plate inscribed "Rest in Peace."

In fact, defendants sent to the pesthouse in lieu of the casket a plain pine box so freshly stained that the stain came off on the hands of the persons handling it in placing the body in it. No robe was sent, and the box was too small, resulting in a side and the bottom of the box breaking, whereby it became necessary to jam the remains back in close quarters.

Because of quarantine regulations, the relatives were not able to attend the funeral, and they did not learn the facts concerning the facts above stated as to defendants' breach of contract until a few weeks after the interment. They then sued for damages for defendants' failure to deliver the goods purchased, and the trial court allowed \$525.50 actual damages, and \$200 exemplary damages, to cover the difference between the value of the coffin and robe paid for and the pine box delivered, and to cover mental anguish suffered through what the court found to be an outrage against the relatives' rights.

In justice to the profession in general and persons called upon to handle the bodies of the dead preliminary to interment, it must be recognized that such inhumane acts as were found by the court to have been committed in this case are not of common occurrence, albeit the court refers to testimony of one of the employees of the pesthouse concerning the practice at that institution, as follows.

"They generally make all of them [coffins] the same size. When we telephone for a man's coffin, generally make a pretty good size man. Small or little man, he goes in just the same."

And the court remarks that "defendant's testimony further shows that he received \$4 balance on the contract price, knowing that a robe contracted for had not been delivered, and stated, in effect, in justification thereof, that all undertakers did business that way, and he did it to keep even. His testimony shows such an utter disregard for the feelings and rights of the plaintiff in the manner of executing the contract as that he should be held responsible for the result arising therefrom."

See, also, Chapter XX.

SECTION 67 MISTAKE AS TO IDENTITY OF BODY

A funeral director's right to a fund deposited with an express company to defray the expenses of preparing a body for burial and transporting it, on it appearing that the deposit was made under a mistake as to the identity of the deceased person, was upheld by the Springfield, Missouri, Court of Appeals in the interesting case of *Frank Livery & Undertaking Co v American Railway Express Company*, 247 *Southwestern Reporter*, 1031.

The body of an unknown man was found at Poplar Bluff, Mo., Mrs. Murray, of Nashville, Tenn., believing that the body might be that of her son, caused her son-in-law, one McDaniel, to send a telegram to the chief of police at Poplar Bluff, asking whether the decedent weighed about 180 pounds and was dark-complexioned. The chief wired back that the description fit. McDaniel wired the funeral director to "send body at once." The funeral director replied that he would ship on receipt of \$150.70, covering his charges and express charges. This amount was not sent, but was deposited with the express company in Nashville. The company's Nashville agent wired the Poplar Bluff agent that he had the deposit, "covering remains Theo Murray," and directed that the funeral director be notified. The express company's district agent directed the funeral director to ship the body and \$120, payable out of the deposit; that being the amount of the funeral bill. The remains were accordingly shipped, but on arrival were found to be those of a stranger. The body was returned to Poplar Bluff, where it was buried by the county.

McDaniel then sued in Nashville to recover the money deposited with the express company and secured judgment against the undertaking company for return of the amount, garnishing the deposit. While that suit was pending, the undertaker sued the express company for the \$120 at Poplar Bluff, and secured judgment. From this judgment the express company appealed to the Court of Appeals. The court affirmed the judgment saying:

"If the deposit was made upon condition that the body to be shipped should prove to be the body of the son of Mrs. Murray, and it was found not to be her son, then, of course, Mr. McDaniel was entitled to recover from the express company the money deposited. If the deposit was made unconditionally, then Mr. McDaniel could not recover it except upon the ground of misrepresentation as to the description of the body which had induced the deposit, and, since there was no effort to connect this plaintiff with such misrepresentation, if one were made, plaintiff's rights cannot be affected by

that judgment. Whether we are right in these observations or not, plaintiff's action in this case is not bottomed on the fact that McDaniel had deposited money with defendant for its benefit. True, that allegation is made and that fact shown, by inducement

"Plaintiff's contention is, and his testimony supported it, that defendant's agent told the plaintiff to ship the body, and defendant had the money and would pay the bill. Plaintiff relied on that statement, and was induced by it to prepare the body and make the shipment, and, if that were true, defendant is liable to plaintiff regardless of what occurred at Nashville unless there was a showing of fraud or deceit, and that plaintiff was responsible therefor. The only thing that can be gathered from the transcript of the proceedings in Nashville, Tenn., is that the suit there was upon an account for money deposited with the express company for the shipment of the body of Theodore Murray to Nashville, and the body shipped was not the body of said Murray. There is nothing to show that this plaintiff had anything to do with the mistake in identification of the body, and even though Mr. McDaniel may have rightfully recovered judgment in Tennessee permitting him to recover from this plaintiff by garnishment of the express company the money deposited by him with that company, the plaintiff in this case would still be entitled to recover from the express company if his testimony is true. We think the instruction given for plaintiff properly submitted plaintiff's claim to the jury, and the trial court was right in instructing them that the proceedings in the court in Tennessee was not a defense to this action. If the defendant is a loser, it must result from its failure to defend a suit in Tennessee, or from the fact that it received the money as a conditional deposit and failed to notify the plaintiff in this case before the shipment was made of that fact. If the money was deposited to be paid by defendant to plaintiff, if the body to be shipped should prove to be the body of the son of Mrs. Murray, and defendant then unqualifiedly directed plaintiff to prepare and ship the body, and agreed to pay him for it, defendant is liable regardless of what occurred in the justice court in Nashville. If it were shown that the suit in Nashville was based on the fraud of plaintiff, then the validity of that judgment would be an issue here; but since it is not so based, and plaintiff is not pursuing the specific fund deposited with the defendant at Nashville, the validity or invalidity of that judgment does not affect its rights in this case. Plaintiff's reliance is upon a specific unconditional agreement by defendant to pay plaintiff for the work done and equipment furnished, and its right to recover depends upon that agreement, and not upon what occurred at Nashville between Mr. McDaniel and the express company."

See, also, Express Company case in Section 80

SECTION 68. VALIDITY OF CONTRACT FOR EXTORTIONATE CHARGES

When a funeral director withholds a body until payment to an express company or other third party, as his collector, of excessive charges for his services, the relative who makes the payment under such coercion is entitled to recover the extortionate part of the charges, and, so far as that part is concerned, the collector cannot be held liable for negligently failing to pay the proceeds to the funeral directors promptly, whereby the relative was able to garnish and hold the excessive part of the charges. This is the substance of the decision of the Texas Court of Appeals in a recent case.

Plaintiff, a firm of funeral directors, sued defendant, an express company, to recover the sum of \$327.50, which was deposited with the express company, to be paid over to the plaintiff. Plaintiff's concern was a partnership engaged in the business of undertaking and embalming and, pursuant to instructions, received, embalmed and prepared for shipment the dead body of one Theodore Bokoski. The shipment was made to Frank Bokoski, a son of the deceased, at New London, Wis. The money to cover the cost of the casket, preparation of the body, etc., amounting to \$327.50, plus \$47.50 for the express charges, was deposited by Frank Bokoski with the defendant's agent at New London for the plaintiff's use after which the dead body was delivered to the defendant in Texas, and was shipped. The defendant express company answered to the effect that it had received the body of Theodore Bokoski and had transported and delivered it to Frank Bokoski at New London, Wis., who made deposit of the charges as plaintiff had alleged, but that within twenty-four hours after such delivery the said Frank Bokoski had instituted suit against the plaintiff company in Wisconsin, alleging that the charges made by the plaintiff company were excessive to the extent of \$200, for which excess Frank Bokoski prayed judgment, at the same time duly causing the service of garnishment upon the defendant and its agent at New London, who was still in possession of the fund.

The plaintiff filed an amended petition alleging that its delivery of the body was refused until the defendant gave its assurance that the deposit before mentioned had been made, and that said money would forthwith be transmitted from Wisconsin to plain-

tiff, and that the defendant company had negligently failed to so transmit said money, having on the contrary, through its agent, conspired with said Frank Bokoski to detain the fund until it could be seized under the process of the Wisconsin court

The Wisconsin suit proceeded to judgment in favor of Frank Bokoski both against the plaintiff and against defendant as garnishee for the aggregate sum, including costs, of \$231 85, which, by virtue of said judgments, defendant was compelled to pay for the benefit of Frank Bokoski. The balance of the fund, \$137 50, the defendant tendered to plaintiff

The Texas case was submitted to the jury upon three special issues, in answer to which the jury found:

"First, that the defendant express company, receiving the money from Frank Bokoski, did not exercise reasonable diligence to transmit and deliver the same to the plaintiff company, second, that the money would not have been garnished if the defendant had exercised reasonable diligence to transmit and deliver same to plaintiff; and, third, that defendant's agent and agents were guilty of conspiracy and collusion with Frank Bokoski in holding or retaining the money in the possession of the express company, in order that the same might be garnished by Frank Bokoski"

The court on these findings of the jury entered judgment in favor of the plaintiff for \$327 50, together with interest thereon, and the defendant appealed.

Reversing the judgment in favor of the funeral directors and deciding the case in the express company's favor, the Court of Civil Appeals said

"The only fraud on the part of the appellant that is alleged, or of which there is a pretense of proof, is founded alone on the alleged fraud of appellant's agent at New London, Wis., in negligently failing or refusing to forthwith send the deposited fund to Texas, whereby Frank Bokoski was enabled to garnish and detain it subject to his claim, if judicially established. There was no effort to show that appellant, or any one or more of its agents, joined, or sought to join, in establishing a fictitious or fraudulent claim. If, as Frank Bokoski alleged in the Wisconsin suit against the appellee undertaking company, the latter party had, under circumstances of duress, wrongfully extorted from him unreasonable and unjust charges for the preparation and shipment of his father's dead body, then as to such part of the exaction as was so unjust and unreasonable the undertaking company had no lawful claim. If such were the facts the undertaking company was in the situation of an extortioner, and cannot be indulged in a complaint that, but for the negligence of appellant, it could and would have been able to get possession of any enjoy the fruits of its ill-gotten gains. So that, as we think, the controlling questions for our determination go to the validity and binding effect of the Wisconsin judgments, the one establishing, or purporting to establish, Frank Bokoski's charge of extortion, and the other directing the appellant to pay part of the fund here claimed into the registry of the Wisconsin court"

The court finds that the Wisconsin judgments were binding.

CHAPTER XVII

LIABILITY FOR FUNERAL EXPENSES

NOTE See, also, preceding chapter.

SECTION 69. IN GENERAL

When practicable, a person other than the one who is by law made primarily liable for funeral expenses should be asked to sign an agreement to make payment, if it is intended that he is to be liable. Otherwise the funeral director may find himself in the situation of the saloonkeeper who, on being asked by one of several customers whether he cared who paid the bill for several rounds of drinks, said "No," and was told to pay it himself, then.

Accounts for funeral services, it may be generally stated, cover two classes of claims. Claims against the estate of a deceased person on account of his funeral expenses, and claims against persons who have become bound to pay such expenses by reason of a direct promise to do so, or by reason of relationship to the deceased. In considering questions relating to the liability of estates and surviving relatives for funeral expenses the following general rules should be kept in mind. A relative of a deceased person may bind himself individually to pay a fixed sum for a funeral director's services, without regard to whether that amount is reasonable or not when considered in relation to customary charges for similar service, and without regard to deceased's station in life. But deceased's estate cannot be held liable, as against complaint of the heirs or deceased's creditors, for more than a *reasonable* expense, the reasonableness being measured by what funeral directors usually charge for the service in question, and by deceased's station. The smaller his estate, the plainer must be his funeral, the courts say. When a funeral director extends credit on account of services to some person who is not legally responsible for the expense, the promise to pay should be evidenced by a note or other writing signed by such person, in order to comply with the law which is in force in nearly every State requiring a promise to answer for the debt of another to be reduced to writing and signed by the person to be bound thereby.

A case reported at page 117, 30 New York Miscellaneous Reports, is typical of common instances where there is only a vague understanding as to who is to pay.

Plaintiff, a funeral director, sued for a balance due for interring the remains of a married woman. Plaintiff was employed by the husband of decedent, but the former, declining to rely upon his credit responsibility, was referred by him to his aunt, a Mrs. Dean, who it was supposed would guarantee payment. When plaintiff called at Mrs. Dean's home, defendant, her daughter said that Mrs. Dean was ill, but that "it was all right," referring to plaintiff's employment, and that Mrs. Dean would secure payment of the bill. Defendant, before saying this, changed the order, as placed by decedent's husband, eliminating an item of expense amounting to about \$20.

It was on these facts that plaintiff's attorney argued that defendant became liable on the bill, but the court decided, and it seems to me justly so, that plaintiff had no valid claim against defendant. The Supreme Court said:

"It is on this that the plaintiff bases his employment. We are unable to deduce any meeting of the minds from this conversation. It was obviously not the intention of either party that the defendant should become the debtor or personally bound. He spoke to her as representing Mrs. Dean, he did not seek to make a contract with her. He went there with the avowed intention of securing Mrs. Dean's guaranty, and addressed the defendant only because she represented the party with whom he proposed to contract. If there could be any doubt as to the intention of the plaintiff that is dispelled by his subsequent acts, consistent only with a purpose to look to Mrs. Dean for payment. Immediately after the performance of the services, the plaintiff sent a bill to Mrs. Dean, and when later payment of a part thereof was made, he rendered a

receipt running to her. Thereafter he wrote her several letters, enclosing a statement in each, urging payment of the balance, he also wrote a letter to Mrs. Dean's attorney-in-fact, wherein he named her as the debtor. At no time did he send bill, statement or communication to the defendant.

"Under these circumstances it is unnecessary to consider the defendant's version which, to say the least, does not strengthen the plaintiff's case. On his own showing he must look to Mrs. Dean for payment, or establish by some testimony that the defendant acted without or in excess of authority."

In several of the states the duty of burial rests on certain relatives, etc., in stated order. The South Dakota statute is typical:

"The duty of burying the body of a deceased person devolves upon the persons hereinafter specified."

"1 If the deceased were a married woman the duty of burial devolves upon her husband

"2 If the deceased were not a married woman, but left any kindred, the duty of burial devolves upon the person or persons in the same degree nearest of kin to the deceased, being of adult age, and within this State, and possessed of sufficient means to defray the necessary expenses

"3 If the deceased left no husband, nor kindred, answering the foregoing description, the duty of burial devolves upon the coroner conducting an inquest upon the body of the deceased, if any such inquest is held, if none, then upon the persons charged with the support of the poor in the locality in which the death occurs

"4 In case the person upon whom the duty of burial is cast by the foregoing provisions omits to make burial within a reasonable time, the duty devolves upon the person next specified, and if all omit to act, it devolves upon the tenant, or if there is no tenant, upon the owner of the premises . . . on which the death occurs or the body is found" Sec 360

"Every person upon whom the duty of making burial of the remains of a deceased person is imposed by law, who omits to perform that duty within a reasonable time, is guilty of a misdemeanor, and, in addition to the punishment prescribed therefor, is liable to pay to the person performing the duty in his stead, treble the expenses incurred by the latter in making the burial, to be recovered in a civil action" Sec 361

It was decided by the Supreme Court of Pennsylvania, in *Bair v Robinson*, 108 Pennsylvania State Reports 247, that a married woman, whose husband was without means, was liable on her contract for the funeral expenses of her mother, who lived and died in their household, leaving no estate. Under these circumstances it was held that such expenses were "necessaries for the support and maintenance of the family of such married woman," within the meaning of the Pennsylvania law, which makes married women liable for such expenses in certain cases.

The following question and answer appeared in *Embalmer's Monthly*

An Iowa reader writes "Where man has all his money invested (no estate of his own) in an incorporated company, and is its president, the company is in debt, he devotes all his time to the company, he dies, and his widow orders an undertaker's services, who is liable for the funeral expenses—the company or the widow? If the company is liable, is the claim superior to the claims of other creditors?"

Answer The gentleman who makes the above inquiry is mistaken in assuming that because deceased's money was invested in a corporation that he had no estate of his own. In such case the assets of his estate consist of his stock in the company, though the stock will be worthless, of course, if on settlement of the corporation's affairs the company's debts equal or exceed the value of its property. But if deceased's stock has any value, it can be subjected to the undertaker's claim just the same as any other kind of property. But the corporation, though solvent, is not liable for the funeral expenses of any of its officers, no matter how much of their time they may have given to the company's affairs. The company is liable for only such debts as are incurred in the transaction of the particular business for which the corporation was organized, so that even if the board of directors should promise in advance to pay claim for the expenses of the funeral of its president or other officer, the promise would not be binding, the law regarding such an obligation as outside the powers of the company. The answer to the question submitted by the gentleman from Iowa must be that the undertaker must look first to deceased's estate for payment, and, if the estate is insolvent, then to his widow, if she has any property against which the claim may be enforced.

The Iowa Supreme Court held in the case of *Carnego v Crescent Coal Company*, 146 Northwestern Reporter 38, that in suing for death of a minor child caused by negligence chargeable to the person sued, a parent is entitled to recover expenses for

a suitable burial. But the court finds that the mere fact that a certain amount has been paid as funeral expenses does not establish the "reasonable" cost of burial.

SECTION 70 PERSONS ARRANGING FOR FUNERAL

When one orders funeral supplies or the services of a funeral director for the burial of a third person, and nothing is said as to who is to pay, the person placing the order may be held personally liable. (*Hoffman v Kanze*, 7 New York Miscellaneous Reports, 237)

"A person not otherwise under obligation to pay funeral expenses may of course render himself liable therefor by contract" (17 Corpus Juris, 1143, citing *Hatton v. Cunningham*, 162 New York Supplement, 1008, and *Anderson v Koen*, 82 Washington Reports, 310, 144 Pacific Reporter, 35)

In the New York case above cited it was decided that where defendant ordered a funeral director to conduct the funeral of defendant's cousin whose husband did not provide therefor, and the funeral director performed services, relying on defendant's promise to pay, he could enforce the promise without exhausting his remedies against the husband or the estate of decedent. The court said

"It seems to me quite clear that this testimony is sufficient to sustain a finding that the defendant ordered the plaintiff to furnish the labor and materials for the funeral of his cousin, and that he agreed expressly or impliedly to pay the expenses himself. It is true that the obligation to pay the reasonable and proper expenses for the funeral rested on the husband, and was in the first instance a charge against the estate; but the husband, either because of his injuries or lack of funds, did not provide for the funeral himself, and the defendant as a friend and relative did give the order. Under these circumstances, the defendant can recover from the husband or from the decedent's estate any expenses which he has incurred for the decedent's funeral so far as they are reasonable and proper (*Patterson v Patterson*, 59 N Y 574, 17 Am Rep 384), and perhaps the plaintiff could recover from the husband or the estate for his services if the defendant fails to pay for them

"On the other hand, the plaintiff was under no obligation to perform such services, and if he did perform them relying on the defendant's personal promise to pay, and not upon the obligation of the husband to provide for his wife's burial or upon the primary liability of the estate, I can conceive of no rule of law which forbids the plaintiff from enforcing the defendant's promise, or which requires him in the first instance to exhaust his remedies against the husband or the estate. The only case which has been cited to sustain such a rule is the case of *Huhna v Theller*, 35 Misc Rep 297, 71 N Y Supp 752. In that case this court reversed a judgment which an undertaker had obtained against the defendant for the expenses of a funeral ordered by the defendant for his deceased infant son. The court there stated

"It may be that the defendant made himself personally liable to plaintiff in the event that the deceased left no estate, or that for any reason the bill could not have been collected out of the estate. The plaintiff should, however, have first resorted to the estate, if there was any, and have shown why he had not collected from that source'

"In that case, however, so far as the opinion shows, the defendant's obligation to pay was based upon a promise which might be implied from the fact that he ordered and arranged for the funeral, and I think that all the court there held was that, in view of the fact that the defendant's estate was primarily liable for the reasonable funeral expenses, it cannot be presumed that the defendant, in ordering the funeral, intended to pay the expenses unless such expenses could not be collected from the estate, or that the plaintiff in furnishing the funeral expected to be paid by the defendant if there was an estate from which payment could be obtained. Certainly, the words of the opinion above quoted should not be construed as authority for any rule that parties, under such circumstances, cannot make any contract that they desire, or that if a party contracts that he, and not the estate, will pay a bill for funeral expenses, such contract is not enforceable. It seems to me that it is quite plain that in each case the question is, what did the defendant expressly or impliedly promise; and, if the evidence shows that the defendant promised to pay independently of any liability by the estate or of any other person, such promise is enforceable immediately

"In the present case, the plaintiff's evidence, if true, sufficiently shows that the defendant promised the undertaker that he would take care of the expenses. He knew that the plaintiff was extending credit to him, and he even paid part of the bill. It is quite immaterial whether he did so expecting to be reimbursed by the decedent's mother or by her husband or from her estate, if any, or whether he did so because of friendship for the decedent. The material point is that he induced the plaintiff to furnish the funeral upon the understanding that the bill was to be paid by him"

Under the facts detailed below, the Washington Supreme Court held in the case of *Anderson v Koen*, 144 Pacific Reporter 35, that defendant, and not the estate of deceased, was liable for the expense of caring for deceased's remains

Deceased died at Silverton, Wash., and the following day plaintiff telegraphed defendant notifying him of the fact. Defendant, on receipt of the message, requested an undertaker at Granite Falls to have some one bring the body to a certain point where defendant would meet it. A severe storm having delayed removal of the body, defendant later directed that it be transported without regard to expense. Thereupon plaintiff and his assistants carried the body to the desired destination on a hand-sled and a hand-car, and it was turned over to an undertaker, who had been employed by defendant to make interment. Later the defendant, having refused to pay the cost of such transportation, was sued. The suit was ordered dismissed by the trial judge, but on plaintiff's appeal judgment in plaintiff's favor was ordered by the Supreme Court. It appears that some years before his death deceased entrusted \$1,400 to defendant and drew thereon, as his necessities required, until the time of his death. At that time there remained in defendant's hands the sum of \$40. Deceased left no other estate whatever, and for some time had lived the life of a pauper in an abandoned building. The Supreme Court says

"The trial court rested its decision on the ground that there was no express promise on the part of the respondent to pay for the services rendered with respect to the carriage of the body, and that the presumption followed that he contracted on behalf of the estate of the decedent. The case of *Butterworth v Bredemeyer*, 74 Wash. 524, 133 Pac. 1061, is cited as sustaining the contention, but we cannot think the case applicable. In that case it was held that an ordinary direction to an undertaker to take charge of the burial of a deceased person did not create a primary liability on the part of the person giving the order to pay the expenses of the burial, that the presumption was that the contract was made on the part of the estate, and that the liability of the person giving the order was secondary to the liability of the estate, and that the primary fund must be exhausted before a resort could be had to the secondary fund. But here there was no primary fund. The decedent left no appreciable estate, and the persons performing the services were entitled to resort to the secondary liability in the first instance. Again, the services here requested were not ordinary burial services, such as the rule contemplates, they were services rendered in transporting the body from a distant place to the place of burial, where it could be turned over to an undertaker to perform the service of burial. The claim for such transportation, therefore, stands on the same plane as would the claim of an ordinary transportation company performing the same service, and the same acts which would create a liability in the one case creates it in the other."

See, also a decision of the Tennessee Supreme Court, 201 Southwestern Reporter, 515

SECTION 71 PERSONS WHO CONTRACTED TO SUPPORT DECEDENT

It has become a very common practice for persons who are becoming decrepit to deed their property to some child or friend, in consideration of the latter agreeing to support the former for the remainder of their lives. In a case of this kind which arose in Iowa it was assumed that a person to whom property was deeded under such an agreement became liable for the funeral expenses of the grantor, but the Supreme Court of that State decided otherwise, saying

"We are quite content with the finding that the Hoyers were not bound under their contract to pay the funeral expenses of Mrs Brandes. This was not part of their contract with the deceased. They agreed to care for her during her life, not to bury her at death. If she had any estate, this estate was subject to claims for her funeral expenses. There is no proof that the Hoyers had agreed to pay funeral expenses" (In re Brandes' Estate, 122 Northwestern Reporter 954.)

But under a decision of the Michigan Supreme Court, handed down in the case of *McKnight v McKnight*, 180 Northwestern Reporter, 437, it is decided that where one person makes a transfer of property to another in consideration of the latter providing for the support of the former for life, the obligation includes providing suitable burial. The court said

"Those obligations fairly imply not only board, lodging, clothing, care, and incidental necessities commensurate with her customary condition and walk of life, but proper care, nursing, and medical attendance in sickness and suitable burial after death."

The fact that a person disposes of all his property during his lifetime cannot be deemed a fraud upon his funeral director, if the disposition is in good faith, within the rule of law that a conveyance of property in fraud of creditors may be set aside, accord-

ing to a decision in the case of *Lockwood v Smith*, 143 New York Supplement 480. During his lifetime one Thomas Atkin and his wife entered into an agreement with defendant whereby, in consideration of their real estate, defendant obligated himself to support them during their lives and at their decease to pay their funeral expenses. Atkin died and a funeral director buried them, but defendant refused to pay the expenses of the funeral, and after the funeral director died, his administrators brought suit on the claim, but the court held that no recovery could be had against defendant, saying: "In this case it is not necessary to determine, therefore, whether the decedent, Thomas Atkin, owed any duty or obligation to the plaintiffs or their intestate. I am unable to discover any such duty or obligation. While the property of a decedent is liable for his funeral expenses, he is under no obligation to preserve or retain property until his death, that it may be subject to the payment of his funeral expenses, and, if in good faith he disposes of all of his property prior to his death, it never would be held that thereby he committed any fraud upon one who, after his death, should see that he was decently and properly buried. I am, therefore, unable to see that at the time of making the agreement the promisee, Thomas Atkin, was under any duty or obligation to the plaintiff or to their intestate which would permit them to maintain this action."

SECTION 72 ASSOCIATE FUNERAL DIRECTORS

A decision of the Iowa Supreme Court handed down in the case of *Griffith v McGinnis*, 176 Northwestern Reporter, 248, shows that direct promise to pay what is due a funeral director is not always necessary to create liability, obligation to pay may be raised by implication.

The parties to this suit conducted separate funeral establishments in Iowa.

Four persons were killed in a railway accident, and the bodies were taken to plaintiff's undertaking establishment. One of the men killed was one Hire, and his friend, Chas S Suiter, bought a casket from plaintiff, together with other articles necessary for interment. Suiter orally agreed to pay for these things.

Before the bodies had been prepared for burial, defendant appeared and volunteered his assistance to plaintiff, which was accepted. After being prepared for burial, the body of Hire was turned over to the defendant, together with the casket and other articles purchased by Suiter. Still later defendant furnished a vault and incurred other items of expense which, with the services rendered at the undertaking establishment of plaintiff and for conducting the funeral, aggregated \$122. Before defendant left with the body, plaintiff made out and delivered to him a bill for \$155.25, concerning which he testified at the trial.

"I made out the bills for the caskets and the underwear and gown, and conveying to the depot, and made the bills out to each individual person. 'Now,' I says, 'this is my bill. Now your bill, you can take the embalming end of it, and your transportation and time and your services, and,' I says, 'you can just send these bills to Mr. Suiter, the cashier of the bank, and he will settle for them.' So I gave him the bills—each individual bill—that is, for my part, and let him take the embalming."

Instead, however, of presenting the bills to Suiter, a statement was made out in the name of the defendant against the estate of Hire for \$277.25, presented by him to the administrator and promptly paid.

Holding that defendant was liable to plaintiff, the Iowa Supreme Court says:

"This action was brought to recover the amount of plaintiff's claim for the casket and other articles furnished at the request of Suiter, and is the exact amount represented by the separate bill referred to above and turned over to defendant for presentation to Suiter for payment. It is conceded that plaintiff furnished the casket and other articles, and that they were included in the bill filed against the estate by the defendant and paid to him. When plaintiff demanded payment of the defendant of the amount due, he offered to pay him the wholesale cost of the casket.

"About the only contention of counsel for appellant is that plaintiff's cause of action is bottomed upon an alleged conversion of the money paid to him by the administrator, and that a cause of action for conversion under the facts pleaded and proven will not lie. Conceding that plaintiff's petition alleges that the defendant unlawfully appropriated the money to his own use and refused to pay the same to plaintiff, it also stated a good cause of action for money had and received, and recovery, if the allegations are supported by the evidence, will be permitted without technical regard to the form of the pleading.

"Defendant, so far as the record discloses, received plaintiff's bill with the implied, if not express, promise to present the same to Suiter for payment. At any rate, the evidence does not disclose that he declined to do this, when the bill was handed to him by plaintiff, and the fact that, instead of presenting the claim to Suiter in plaintiff's name, he filed same against the estate of Elmer J. Hire and received payment from the adminis-

trator, makes no difference. The money belonged to plaintiff, and there was at least an implied promise to account to plaintiff therefor. We perceive no theory upon which defendant may rightfully retain the profit on the casket and other articles furnished by plaintiff."

SECTION 73. LIABILITY OF HUSBAND

NOTE See, also, subsequent sections relating to liability of estate

When a married woman dies, her husband is primarily liable for her funeral expenses, and not her estate, and no estate is liable on a claim for funeral expenses when it appears that claimant extended credit, not to the estate, but to some third party. These were the principal points decided by the Georgia Supreme Court in the case of *Kenyon v. Brightwell*, 120 Georgia Reports, 606. Summarized, the views expressed by the court are as follows:

At common law (that is, the law as it stands in the United States and England, except as changed by statute), a husband is bound to bury his deceased wife in a manner suitable to his station in life, at his own expense. This rule prevails in many, though not all, of the States, a few having prescribed a different rule by statute. The duty to defray a wife's funeral expenses grows out of the obligation of the husband to provide her with the necessities of death as well as the necessities of life.

It has been held that the husband has supreme authority to direct where the wife shall be buried, that it is his duty to care for her grave, that in selecting a place for the interment of the body he may act regardless of the wishes of her family, and even that he may remove a gravestone placed at the head of the wife's grave by her mother and substitute another more in keeping with his taste.

A statute giving priority to claims for funeral expenses in the settlement of estates does not supersede the common law liability of the husband above mentioned. Unless specially made so by statute or by the provisions of her will, the funeral expenses of a married woman who leaves a husband surviving her are not a debt of her estate.

In *Lucas v. Hessen*, 13 Daly (N. Y.), 347, it was held that an executor is not liable to a funeral director for necessities furnished for the funeral of his testator, although he may have assets sufficient to pay the claim, where the funeral was ordered by and the credit given to another person. This case is also authority for the proposition that the husband was primarily liable to the funeral director, but under the New York statute he could recover from the executor of his wife's estate the amount so paid to the funeral director.

At the common law the husband was always individually liable for the burial expenses of his wife. Some have thought that this liability arose out of the fact that at common law all the wife's property was either owned or controlled by the husband. It seems more correct, however, to say that the husband's liability proceeded from his general liability for his wife's necessities, decent burial being considered a necessity. There is no doubt that the husband is still personally liable for his wife's burial expenses when she leaves no estate, and this liability is not discharged by the fact that they may be living apart through the wife's fault (*Seybood v. Morgan*, 43 Ill App 39). But what is the effect of the wife dying and leaving an estate behind? Upon this the modern cases are at variance. Some cases hold that since the quite general adoption of statutes allowing married women the use, ownership and control of their property the husband's primary liability has ceased and he is only secondarily liable, namely in case the wife's estate should not prove sufficient (*See Schneider v. Brier*, 6 L R A, N. S., 917). Other courts hold that the husband still remains primarily liable for such expense, notwithstanding the statutes conferring property rights on married women (*Smyley v. Rees*, 53 Ala 89). In jurisdictions holding to this latter view the wife's burial expenses can be collected from her estate only in case the husband is unable to pay them. If he is unable to pay them, however, the wife's estate can be held liable (*Gould v. Moulahan*, 33 Atl 483; *Re Werneger*, 34 Pac 825).

Where a husband or wife dies leaving an estate, it will be presumed that the estate is to be liable for funeral expenses, in the absence of an undertaking on the part of some one else to bear the cost, according to the decision of the Massachusetts Supreme Judicial Court in the case of *Hayes v. Gill*, 115 Northeastern Reporter, 492.

What the court said is of practical importance to funeral directors, as bearing on the validity of funeral expense claims made directly by them, although the facts in the cited case did not bring the funeral director into the controversy, the issue being whether a husband was entitled to reimbursement against his deceased wife's estate for funeral expenses paid.

Deciding the question in the surviving husband's favor, the court held that notwithstanding a husband's marital obligations, the statutes of Massachusetts give him a pre-

ferred claim against his wife's estate for funeral expenses paid, the same as a wife may look to her departed husband's estate to reimburse her for funeral expenses advanced.

But where a husband is financially able to pay his wife's funeral expenses he is bound to do so, and is not entitled to reimbursement against her estate, according to the California District Court of Appeal in the case of *Brezzo v. Brangero*, 196 Pacific Reporter, 87. Claim was made against defendant husband by his wife's executrix to recover a sum of money due his wife's estate from him. Holding that he could not offset against this claim money paid as funeral expenses, the court said

"If, as was the case in *Re Estate of Mathewson* (Sup) 184 Pac. 867, the husband does not have sufficient income to pay the funeral expenses of the deceased wife, it may be proper under some circumstances as indicated in that decision, to make an allowance to the husband for such purpose. But here the court found that the defendant, the surviving husband of Margherita Brangero, deceased, was financially able to pay the funeral expenses out of his own property and estate, without the necessity of any recourse to the moneys of the deceased wife. Consequently, he was bound to bury the deceased wife in a suitable manner, and to defray the necessary funeral expenses."

This decision and the decision of the California Supreme Court cited are of interest to funeral directors because they bear inferentially on right of a funeral director to hold a husband liable for funeral expenses where there has been no specific agreement as to who should bear such expenses. The salient parts of the opinion of the Supreme Court in *Mathewson Case* are as follows

"This case is an appeal from an order settling a final account and allowing the husband, who was the administrator of the estate, the amount of \$512.50 for the reasonable funeral expenses of his wife's burial. The only heirs of the deceased were the appellant, who was her mother, and the respondent, who was her husband.

"The first point assigned as error is the allowance for funeral expenses. Upon that subject the court found that the husband was the owner of property in his own right of the value of \$7,050, that he was a joint tenant with his wife of certain property of the value of \$8,000, incumbered to the amount of \$6,000, which property he succeeded to and holds by right of survivorship upon the death of his wife, that the income from the property was about sufficient to pay the interest upon said incumbrance and taxes, that he had borrowed money since the wife's death for his necessary living expenses, and did not have sufficient income to pay the funeral expenses, and that \$512.50 was 'a reasonable and proper sum to be allowed as funeral expenses in view of her manner of living, her position in society, and the amount of her estate in her lifetime.'

"In support of the appeal the case of *Estate of Weringer*, 100 Cal. 345, 34 Pac. 825, is cited. That case, in our opinion, justifies an allowance to the husband, as administrator of the wife's estate, of funeral expenses, if, when the circumstances of the parties, their mode of living, and the amount of the estate of the wife and husband, respectively, are taken into consideration, it is reasonable to do so. This case comes up without the evidence. The findings aforesaid show facts which justified the exercise of the discretion of the court in making the allowance of the funeral expenses."

A husband is primarily liable for expenses incident to his wife's death and burial, although she died leaving a separate estate. (*Conn's Estate*, 65 Pennsylvania Superior Court Reports, 511.)

Citing decisions from the highest courts of other jurisdictions, the Indiana Appellate Court held in the case of *Rocap v. Blackwell*, 137 Northeastern Reporter, 726, that a husband's common-law liability to defray the expense of his deceased wife's burial is not removed by a statute under which such expense may be paid from her estate, if she leaves one.

Mrs. Shea died and her husband requested funeral directors to take charge of the burial. This they did and later filed claim against her estate. The executor objected to the claim on the ground that the surviving husband was solely liable. The objection was overruled and the executor appealed to the Appellate Court, which affirmed allowance of the claim against the estate. The decision rested somewhat upon the terms of a will left by the deceased wife.

The will directed payment of her funeral expenses out of her estate, payment of certain legacies, and distribution of the residue of her estate to her husband. And the husband refused to pay the bill personally. Disposing of the case, the Appellate Court said:

"The common law imposes upon the husband the duty to support his wife, and, upon her death, to provide for her body a decent burial. That duty arises out of the marital relation, and is referable to considerations of natural justice and public policy. It originates at the time of the marriage. It is a continuing duty, and cannot be fulfilled until the last act of piety has been performed. Any attempt to treat the duty of a hus-

band to support his wife as being a duty separate and distinct from the duty to bury her lifeless body in a manner suitable to his estate and station in life serves only to confuse.

"The statute provides that the debts and liabilities of a decedent shall be paid in the following order (1) The expenses of administration, (2) the expenses of the funeral of the decedent, (3) the expenses of his last sickness. Section 2901, Burns' Ann St 1914. Counsel for the appellees contend that, where a deceased wife leaves a separate estate, the effect of the statute is to relieve the surviving husband from his common-law liability for the payment of the expenses of her funeral. The contention cannot be sustained. The statute was enacted for a different purpose. For obvious reasons every lifeless human body should have proper care and respectful disposal with reasonable promptitude. That is a matter which cannot be delayed to give relatives an opportunity to settle their disputes as to who shall pay the expenses. *Sears v Giddey*, supra. The purpose of the statute is to insure, in so far as practicable, a reasonably prompt burial. To that end the funeral expenses are imposed primarily upon the estate of a decedent as a liability arising out of equity and public policy. Nevertheless the husband's common-law liability has not been abrogated, but remains in full force and effect in this jurisdiction.

"It does not necessarily follow, however, that a third person who furnished the means of support for a married woman must in every case recover his compensation from the husband or be turned empty-handed away. By her own contract the wife may bind herself and her separate estate for the payment of the purchase price of merchandise which she procures for herself, even though the articles be necessary for her support. Indeed, a third person may furnish the necessities of life for a married woman under various other circumstances which will give him a right to recover from some other than the husband. Likewise it does not necessarily follow in every case that an undertaker who renders the services and furnishes the supplies necessary for the proper burial of the lifeless body of a married woman must recover from the surviving husband or forever go unrequited. We are not aware of any principle of law which prohibits a married woman from making, by the terms of her will, the expenses of her funeral and burial a charge upon her separate estate.

"In the case at bar it clearly appears from the entire will that the first item thereof is, in reality, a provision in favor of the surviving husband. If he should pay the expenses of the funeral and burial of the decedent, then, if the estate be solvent, the amount thus paid would eventually be returned to him under the residuary clause. Hence it would be folly to require him to pay the claim at this time just for the sake of increasing to that extent the portion he is ultimately to receive from the state. It is obvious that the probate court did not err in denying a new trial.

"It should be understood that we are not deciding that the effect of the will is to absolutely release the husband from his common-law liability. A situation might arise which would require the application of principles of equity and the enforcement of his common-law liability as between him and creditors or as between him and other legatees. That feature is not presented by the record."

Suitable garments and casket for the burial of a wife, who had been forced to live apart from her husband because of his cruelty, were chargeable to the husband as necessities, where he was a man of means, and her only property was a small cottage worth \$365, and her only income at the time of her death was that earned by her 15-year-old son. (*Indiana Appellate Court, Scott v Carothers*, 47 *Northeastern Reporter*, 389.)

Among the interesting and instructive court decisions to be found in the law reports on the subject of collection of undertakers' claims is the opinion of the Appellate Division of the New York Supreme Court, handed down in the case of *Watkins v. Brown*, 89 *Appellate Division Reports*, 193.

Plaintiffs, funeral directors, brought suit to recover for services rendered and money expended in connection with the burial of defendant's wife. At the time of the death decedent was living apart from defendant, although not divorced, and it appears that defendant did not employ plaintiffs. They were employed by a friend of the dead woman, to whom she had handed a life insurance policy, which was payable to her husband as beneficiary, at the same time requesting the friend to see that she was properly buried. It was this friend who engaged plaintiffs' services. It seems, however, that before he saw the plaintiffs in regard to the matter, the body had been sent by another friend of decedent to the establishment of another embalmer named Thomas, with instructions to prepare it for burial. There the body was found by plaintiffs, who paid Thomas \$20, claiming that he refused to surrender possession until that payment was made. The husband refusing to pay for plaintiffs' services in making the interment, or to reimburse them for the \$20 so paid, suit was brought to recover on both items. Trial of the suit

resulted in judgment for \$132 in plaintiff's favor, which the Appellate Division affirmed on appeal, after striking out the \$20 item for the reasons stated below. The higher court said:

"A surviving husband is under a legal obligation to bury the corpse of his wife, being allowed to reimburse himself from the separate estate of his deceased wife if she has left any such estate. If the husband fails to perform this duty he is liable to an action to recover the reasonable value of its performance by any person who, on account of his absence or neglect, has properly incurred the expense of the necessary burial. This rule applies to the present case. It does not appear that the deceased wife left any property other than the policy of life insurance payable to her husband. The plaintiffs were solicited to attend to the interment by a friend of Mrs. Brown, who acted in the matter at her special request. They cannot be regarded, therefore, as having officiously intermeddled in the matter as is suggested in behalf of the defendant. Under the facts as established by the proof they are entitled to recover the reasonable value of their services. This amount, however, could not include the twenty dollars which was exacted from them by the undertaker, Thomas, as a condition of giving up the body. Even if that charge represented any services claimed to have been performed by Thomas, there is no evidence that the reasonable value of his services amounted to that sum or any other."

It will thus be seen from the above decision that in enforcing a claim of this kind an undertaker must not only show general liability on the part of the person sought to be charged, but must show the reasonableness of the claim.

In the case of *Stone v. Tyack*, 129 Northwestern Reporter, 694, decided by the Michigan Supreme Court, it appeared that a husband and wife were separated and that she died in the State insane asylum. Plaintiff, stepfather of the wife, being notified of the death, made arrangements for the funeral and incurred liability for the expense, and afterwards brought suit to recover the amount. In holding the husband liable, the court said:

"Defendant urges four reasons why plaintiff should not recover, as follows: (a) Because it is admitted by plaintiff that he made no effort to notify the defendant of the death of defendant's wife, and defendant had no notice and no opportunity to bury the deceased. (b) Because plaintiff voluntarily and gratuitously assumed the obligation. (c) Because the plaintiff made no demand upon the defendant before bringing suit. (d) Because there was no contract, express or implied."

"That the husband is primarily legally liable for the ordinary funeral expenses of his wife is not open to question."

"Defendant's first position is untenable for the reason that the record clearly shows that plaintiff did not know where defendant lived. He was therefore unable to notify defendant, even if it was his duty to do so. Under the circumstances presented by this record, he did not owe this duty to defendant, though, by causing a letter to be written to defendant's brother, he apparently took the best means at hand to bring the fact of Mrs. Tyack's death to defendant's notice. Had the defendant displayed the slightest interest in his wife's welfare he would have arranged with the asylum authorities to keep him advised of her condition and of her death, if it should occur. This simple act of humanity towards the woman he had lived with for nearly twenty years as husband and wife he did not perform. He should not be heard to complain now because a stranger did not cause him to be notified. It was his duty to have provided himself with such notice."

"The fact that, at the time the liability for the funeral expenses was incurred by plaintiff, he expected to discharge that liability himself, is of no consequence. Public necessity demands burial, and, when not furnished by those legally liable, may be furnished by strangers, and the value thereof recovered from the person liable therefor. The liability of the husband, in the case at bar, is not altered by the fact that at the time of his wife's death they were living apart."

"No contract between defendant and plaintiff was necessary nor was it necessary to make a demand before bringing suit. The suit itself was a demand."

"It should be noted that, in the case here considered, there is no claim of unlawful or officious interference with the husbands' rights on the part of the plaintiff, and it does not appear that the cost of the burial was greater than was reasonably consistent with the station in life of deceased and her husband."

A funeral director's right to compel a surviving husband to pay a bill covering his wife's funeral expenses is not affected by the fact that she may have had property of her own and left it to a son by a former husband, who participated with the husband in selecting the casket, etc., according to the decision handed down by the Iowa Supreme Court, in the case of *Sears v. Gidday*, 2 Northwestern Reporter 367. It appears that when defendant's wife died, her husband and son called upon plaintiff, a funeral director, and gave

orders for a casket, other funeral articles and for carriages for the funeral. Nothing whatever was said respecting payment or who was to be charged, and the husband no more placed the order than did the son. The charge was actually made to the husband, but when the bill was presented to him he refused to pay, assigning as a reason that his deceased wife had property of her own, which she had willed to her son, and therefore the son should pay. Plaintiff then called upon the son, who also refused to pay, but he did lend plaintiff the amount of the bill, on an understanding that plaintiff should sue defendant to recover the amount for the son's benefit. Under this condition of affairs the trial court held that the husband was not liable, but on taking of an appeal to the Supreme Court the decision was reversed. The Supreme Court said: "The common law liability of the husband for the funeral expenses of the wife is not disputed in this case. We must, therefore, find in the facts some special reason for exemption, or the judgment cannot stand. The fact that the woman had an adult son, who accompanied the husband when the order was given, can constitute no reason. The undertaker naturally assigned the credit to the person whose duty it was by law to make provision for the funeral. It was not necessary for the husband to say 'I will pay,' or for the son to declare 'I will not pay,' in order to determine who was contracting. Formalities may well be dispensed with on such an occasion, and the law will presume the proper party understood he was to be charged. Mere presence and assistance in making selections or giving orders cannot establish a liability without express words of promise, but the party to whom the law assigns the duty will be charged by legal implication. There was no showing in this case that the wife left property, but the fact is not important. A funeral cannot be delayed for judicial inquiries to determine upon whom the moral obligations to proceed rests most heavily. Nor if husband and son quarrel about the expense over the grave of the wife and mother can the undertaker be compelled to await a judicial adjudication of their dispute. The husband being liable to him, he need look no further. It was urged that the arrangement between the plaintiff and the son (whereby the amount paid by the latter was understood to be a loan until it could be collected by the undertaker from the husband) was a payment of the demand, but we do not think so."

SECTION 74 LIABILITY OF WIDOW

Under a statute which makes funeral expenses a preferred charge against the estate of deceased it has been held by the Supreme Court of that State that the liability of the estate is primary; that liability of his wife for such expenses is secondary, and can be enforced only after the estate has proved to be insufficient; and that while a widow's direct promise to pay for her husband's funeral expenses creates a primary liability against her, such a promise is not implied from the mere fact that she ordered the services. The full report of this case can be found at page 1061, 133 Pacific Reporter. The court said in part: "It may be that a wife is liable for the reasonable funeral expenses of her husband whether she expressly promises to pay for them or not, but in the absence of an express promise her liability is secondary and not primary. As was held by the Supreme Judicial Court of Maine in *Phillips v. Phillips*, 87 Me. 324, 32 Atl. 963, the necessity of a decent burial arises immediately after the decease, and the law, both ancient and modern, pledges the credit of the estate for the payment of such reasonable sums as may be necessary for that purpose, even though such expenses may have been incurred after the death and before the appointment of an administrator.

It is not denied, of course, that an express promise to pay the expenses of a funeral will create a primary liability against the person so promising, but it is meant that nothing less than an express promise will create such a liability. In other words, a mere direction to furnish such service and supplies is presumed to be made on the faith of the credit of the estate, and nothing short of an order and an express promise to pay for the furnishings by the person giving the order will create a primary liability on his part."

In the case of *Lohmeyer v. Young*, 195 Southwestern Reporter, 507 the Springfield, Mo., Court of Appeals affirmed judgment in favor of plaintiff, a funeral director, for supplies and services furnished in the interment of defendant's husband.

There was no dispute as to the fact that plaintiff furnished the coffin, burial robe, hearse, etc., for the funeral, and that the price charged was reasonable. The question litigated was whether defendant had rendered herself personally liable on the account. Decedent and defendant were estranged and living apart at the time of his last illness, but she visited him at the hospital and was present when he died. A friend summoned plaintiff to take charge of the body and to prepare it for burial.

Says the court, "Nothing was then said by anyone as to payment, as was natural and proper."

The plaintiff, on learning that the deceased's widow, defendant, and his relatives were not on friendly terms, asked defendant whether she would pay the funeral expenses. This

occurred two days before the funeral, which had been deferred to await the arrival of relatives. Plaintiff's testimony was to the effect that defendant agreed to pay, while her evidence contradicted this, tending to show that she disclaimed responsibility and stated that plaintiff must look either to decedent's estate or insurance proceeds for payment. The jury decided this conflicting evidence in the funeral director's favor, finding that he had correctly testified to the facts. This verdict was returned under an instruction given by the trial judge to the jury, to the effect that if, while her husband's remains were yet in plaintiff's funeral establishment, the defendant contracted that, if plaintiff would proceed with the funeral, she would pay him for his services and the casket and material used, and he did proceed under this promise, he was entitled to recover the reasonable value of such services and supplies.

At the trial, the attorneys for defendant claimed that if plaintiff did promise to pay the charges it was at a time when plaintiff had already undertaken to conduct the funeral, on the credit of the estate or of the person who ordered plaintiff's services, and that the case therefore must fall within the rule of law that a promise to pay the debt of a third person is unenforceable unless made in writing. Referring to this contention, the Court of Appeals said:

"We do not so hold, for, even where goods are furnished or services performed for a third party at the request and on the credit of one who promises to pay therefor, and are at the time charged to such promisor, then such promise is an original one and not within the statute of frauds [the rule of law mentioned in the last paragraph]. . . . The court excluded the item of embalming the body on the theory that that item of expense was incurred before defendant's promise to pay, and would be within the statute of frauds. We need not inquire about the correctness of that ruling since it was favorable enough to the defendant."

SECTION 75 RIGHT TO HOLD INSURANCE PROCEEDS

It is quite well settled that the proceeds of a life insurance policy in favor of insured's wife or wife and children are not liable to payment of debts left by insured, or owing by his executor or administrator. This rule applies in South Carolina by virtue of the provisions of section 2721 of the Civil Code, except where it appears that insured has expended in excess of \$500 a year in insurance premiums. Hence it follows that where the undertaker's claim is against the estate, and not against the surviving widow or some other beneficiary of life insurance by virtue of a promise to pay the funeral expenses or legal liability to pay them by reason of insolvency of the estate, the insurance money cannot be reached by the undertaker.

Even when it appears that a funeral director has a valid personal claim against the beneficiary, by statute in several states life insurance money in favor of a widow or other members of insured's immediate family cannot be reached. However, it is well settled that in the absence of any such statute a beneficiary has no exemption in insurance proceeds as against his or her creditors, and this rule certainly extends to the protection of a funeral director as creditor. For decisions sustaining the last stated rule see: *Martin v Martin*, 187 Illinois Reports, 200, *Murdy v Sykes*, 101 Iowa Reports, 549; *Hathorn v Robinson*, 96 Maine, 33, *Rice v Smith*, 72 Miss, 42, *Meyer v Supreme Lodge*, 72, Missouri Appeals, 350, *Reiff v Armour*, 139 Pacific Reporter, 633 (Washington); *Norris v Insurance Company*, 131 Mass, 294, *Rector v Bank*, 142 Mich, 479, *Brewing Company v Cussman*, 9 Ohio Sup and C Pl Dec, 599.

From the following cited decisions it seems quite clear that the clause in the policy permitting the company to pay the proceeds of the policy to anyone equitably entitled to them through having incurred expense for the burial, etc., does not give any right to such person to compel such payment. These decisions hold, in effect, that the clause merely gives the company the option to make the payment, as against the principal beneficiary. *American Security, Etc, Co v Prudential Ins Co*, 16 Appeal Cases (D C), 318; *Thomas v Same*, 158 Indiana Reports, 461, *Bradley v Same*, 187 Mass, 226, *Brennan v Same*, 170 Pa St, 488, *Thomas v Same*, 148 Pa St, 594.

In those states where there is no statute exempting insurance proceeds from liability for debts of a beneficiary, it seems to be settled that after the proceeds have been collected from the insurance company they may be attached or garnished in the hands of a bank or any third person who holds them for the beneficiary. So holds the Illinois Supreme Court in the case of *Martin v Martin*, 187 Illinois Reports, 200. But it seems equally well settled that the proceeds cannot be tied up in the hands of the insurance company by attachment or garnishment proceedings.

The Minnesota Supreme Court decided, in the case of *Rose v Marchessault*, 177 Northwestern Reporter, 658, that under the Minnesota statutes insurance money payable on a policy on the life of a husband to his wife is exempt from garnishment on a claim against her on account of expenses for his burial.

Plaintiff, the daughter of a decedent, provided burial of his remains on his widow neglecting to do so, and brought suit against the latter for reimbursement. Garnishment was obtained against the proceeds of insurance on decedent's life, payable to the widow, but the court holds that garnishment was not proper, the proceeds being exempt.

The decision rests upon statutes in force in Minnesota, providing that fraternal association benefits, etc., shall be exempt from seizure to satisfy claims against the beneficiary, and providing that "all moneys received by, or payable to, a surviving wife or child from insurance upon the life of a deceased husband or father, not exceeding ten thousand dollars," shall be exempt from seizure. The following language used by the Supreme Court would apply with full force to a suit brought by an undertaker to secure payment of a claim for services and supplies.

"The plaintiff's cause of action is predicated upon the claim that she bore the funeral expenses and the expenses of the last sickness of her father, which should have been borne by the defendant and which she declined to bear. The statute gives priority first to the funeral expenses of a decedent and second to the expenses of the last sickness. G S 1913, Sec 7338. The priority is in the distribution of the assets of the estate. The insurance was payable to the defendant and was not a part of the estate. The statutory priority gives the plaintiff no right to reach the exempt insurance.

"Upon no theory can the plaintiff attach the insurance money"

SECTION 76 LIABILITY OF PARENTS

Where a father is insolvent, expense on account of the burial of his minor child is a proper charge against the estate of the child, according to the decision of the Indiana Appellate Court in the case of *Martlen v Martlen*, 89 Northeastern Reporter, 966. In the earlier case of *Rowe v Raper*, 54 Northeastern Reporter, 770, the same court determined that a parent is bound to provide the necessities incident to his minor children's death, as well as the necessities of life, regardless of any property owned by them. But the court recognized the liability of a minor widow on a contract to pay the funeral expenses of her husband, who leaves no property, and upholds the validity of a minor husband's contract to pay for the interment of his deceased wife or children. In a New Jersey case, *Sullivan v Horner*, 7 Atlantic Reporter 411, a claim for the burial expenses of a child, as well as those of his parents (all having been killed in the same railroad accident) was decided to have been properly charged against the father's estate, though he was insolvent.

In a case reported at page 628, 74 Southeastern Reporter, the North Carolina Supreme Court decided that a father was liable for the funeral expenses of his minor son whom he had previously driven from home. The court held that, although the son had been emancipated in the sense that he and not his father was entitled to his wages, the parent could not dodge responsibility for necessities furnished on the son's account. It was decided that funeral expenses are clearly "necessaries" for which a father or husband may be held liable.

The Missouri Supreme Court in the case of *Walsh v Morrissey*, 54 Missouri Supreme Court Reports 309, wherein it was held that a father's estate was not chargeable with the expenses of the funeral of a child who died a few hours after the father. This decision evidently proceeded upon the theory that, the father having died first, the child immediately acquired an estate of his own, made up of his interest in the father's estate, and that the child's estate should be held responsible for his funeral charges.

The Appellate Division of the New York Supreme Court upheld the liability of a father for the funeral expenses incident to the burial of his adult daughter who was living with her mother, apart from the father. (*William M Martin & Co v Van Denburgh*, 164 New York Supplement, 966.)

Claimants, funeral directors, filed a claim against the father's estate for the amount of the funeral expenses of his daughter, who was more than 21 years of age, but mentally incompetent. The mother and father were living apart, and upon the daughter's death, the mother telephoned the father, who asked what funeral director she was to have, and she inquired whom he wanted, and he directed that the claimants be employed, saying that he would pay the bill. She thereupon employed the claimants to conduct the funeral, which they did, and no question was raised as to the reasonableness of the amount of the bill.

It seems that the father subsequently died and that the claim was made against the estate. The administratrix resisted the claim, contending that the telephone conversation was incompetent as legal evidence on which to base the father's liability, but the surrogate allowed the claim, on the ground that there was at least a moral obligation on the part of the father to bear the expense of his daughter's burial, and the higher court affirmed the judgment on appeal, saying:

"The mother's evidence fully establishes the defendant's liability. From her testi-

mony she was the agent of the father in employing the undertaker, and she was competent to prove the agency. We feel, however, that it is unnecessary to consider more fully the competency of the mother as a witness, as upon the facts shown, aside from her testimony, the defendant is well charged with the liability. We must assume from her testimony that in talking over the telephone with her husband she recognized his voice."

It was held by the New York Supreme Court in the case of *Gobber v. Empting*, 72 Miscellaneous Reports, 10, that where parents were separated the husband was liable to an undertaker for reasonable expenses in burying an infant child who was living with the mother.

SECTION 77 LIABILITY OF BROTHERS AND SISTERS

The liability of a brother or sister was upheld by the California District Court of Appeals in the case of *Fench v. McMeekan*, 17 California Appellate Reports, 22, where a brother was held chargeable with the expense of burying the remains of an unmarried sister who died without means of her own.

The case of *Van Meter v. Taylor*, 194 Southwestern Reporter, 729, decided by the Kansas City Court of Appeals affords another example showing that litigation may often be avoided by the simple expedient of a direct agreement as to who is to pay the funeral director's bill.

Plaintiff kept a stock of coffins in a small Missouri village. A Mrs. Butler died, leaving a husband in poor financial circumstances. Defendant, her brother, was abundantly able to bear the expenses of the burial. He and a neighbor went to plaintiff's establishment and discussed with plaintiff's salesman the question as to what would be an appropriate coffin. Defendant admitted that when the neighbor was asked to express an opinion on the subject, and had indicated what he thought would be a good selection, he, defendant, told the salesman that he "guessed that settled it, and to fix that one up."

The court finds that there was ample evidence tending to show that defendant bought the coffin on his own credit, but that if he did not, as a matter of fact, buy the coffin, he so acted and conducted himself as to warrant the salesman in believing that he was the purchaser.

The price agreed upon was \$100, and when defendant left the salesman reported the sales as having been made to "Harry," the salesman mistakenly supposing that that was defendant's first name. But on discovering the mistake, demand was made upon defendant to pay, whereupon he said that "he had paid all bills for Butler that he was going to pay."

Replying to the claim made by defendant that he could not be legally liable for the bill unless he personally and expressly agreed to be liable for the price of the coffin, the Court of Appeals said:

It is manifest that if the evidence in plaintiff's behalf is to be believed, the verdict cannot be disturbed. We have examined the authorities cited by defendant from this and other states, but do not find any that would justify us in ruling that the court, under the evidence, erred in submitting the case to the jury.

Accordingly, the verdict of the jury finding defendant to be liable was sustained by the court on appeal.

An interesting decision handed down by the California District Court of Appeal the other day shows how one kind of an account may be bolstered up, although defectively entered. The decision was announced in the case of *Wright v. Loaiza et al*, 166 Pacific Reporter, 369, plaintiff having sued as assignee of a funeral director's claim.

Defendants were brother and sister, and their brother died while residing with the sister. When the death occurred the surviving brother at the request of the sister, went to the undertaking establishment, selected a casket and made other funeral arrangements involving an aggregate expense of about \$600. Although the brother acted for his sister and himself, the funeral directors made the charge on their books to the brother alone. From time to time payments amounting to \$125 were made by the brother on the account covering all that he was to pay, under his arrangement with his sister. The claim was then assigned by the undertakers to plaintiff and he brought the suit. Judgment being rendered against the sister for the balance due, she appealed, but the higher court affirmed the judgment.

The sister denied liability because her name was not upon the funeral director's books and because, as she claimed, any demand against her had outlawed. But the court holds that an open book account, which under the laws of California is good for four years, existed against the sister, as well as the brother, and that a two-year statute of limitations relied upon by the sister did not apply. The court said on appeal:

"The only question is whether or not, the name of Dolores not appearing in any way

upon the books of plaintiff's assignors, the plaintiff is entitled to bring this action on an open book account, the contention of the appellant (the sister) being that there is no open book account as far as she is concerned. The uncontradicted evidence shows that the party whose name the funeral directors did enter, W. Y. Loaiza, was acting throughout as the duly authorized agent of Dolores, and was understood by them to be such at the time her brother requested the services to be performed. Under these circumstances Dolores Loaiza, as the principal of W. Y. Loaiza, is sufficiently a party interested in this account to constitute it as to her an open book account. From the examination of the record which we have made in this case we are of the opinion that there is no merit in this appeal, that the action was brought upon an open book account, that the defendant, W. Y. Loaiza, in its creation acted throughout as the agent of Dolores Loaiza, who was the real party indebted upon this account, that the payments made upon this account constituted it an open book account, and, that being so, the plea of statute of limitations on the part of Dolores Loaiza has no merit."

SECTION 78 LIABILITY OF GRANDFATHER

According to a decision of the Iowa Supreme Court in the case of *Rader v Davis*, 134 Northwestern Reporter 849, where a divorced wife, to whom was awarded the custody of her child, took up her residence with her father, and the child died at his home, he was liable for the funeral expenses.

SECTION 79. LIABILITY OF GUARANTORS

When a funeral director furnishes services or supplies to one who is not pecuniarily responsible, on the faith of a third person's promise to pay, the best and safest thing to do from a legal standpoint is to secure the signature of the third person to a written promise to pay. The next best thing to do is to charge the account directly and solely to the third person, being sure to preserve ability to show that he has actually authorized the charge. These suggestions are grounded on the fact that under the laws of most of the states a verbal promise to pay the debt of another is unenforceable. That is, if A, a funeral director, furnishes supplies or services to B on the latter's credit, C's promise to pay if B fails to pay is of only moral binding force. But if A says to B and C, "Since B's means are limited, I do not feel warranted in extending credit to him. I am willing to furnish the supplies or services if you, C, will permit me to charge them directly to you", and if C agrees to this, then he becomes legally liable as the primary debtor, without signing any writing, because he is not undertaking to pay the "debt of another" within the statutes mentioned, but is promising to pay a debt incurred directly against himself. A practical illustration of these rules of law is afforded by a case which was before the Georgia Court of Appeals (*McGowan Undertaking Co v Kersey*, 93 Southeastern Reporter, 1017).

It appears that a death occurred in one Taylor's family and that he arranged with the undertaking company to furnish a coffin and dress. A representative of the company testified, "My recollection is that W. M. Kersey said for me to let Taylor have the coffin and dress, and he would see that I got the money. . . . I charged the account to J. S. Taylor and W. M. Kersey, and I am looking to both of them for the money. . . . In a subsequent conversation between me and Kersey, . . . Kersey said: 'I did not tell you I would pay for the goods, I told you I would see that you got your money.'" As to the negotiations at the time the credit was extended, Kersey testified "I then stated that I would keep in behind J. S. Taylor and make him pay so much each month, and I would see that the McGowan Undertaking Company got its money."

The suit was brought against Kersey and Taylor jointly, and judgment was rendered in favor of the company, but the Court of Appeals reversed it on appeal, holding that under the evidence, the jury were not authorized to find that Kersey's contract was an original undertaking on his part to pay, but rather that he was merely acting as surety for Taylor, within the provision of the Georgia statute, which provides that a promise of one person to answer for the debt of a third person is not enforceable unless reduced to writing and signed.

For a form of guaranty, see Section 63.

SECTION 80 LIABILITY OF EXPRESS COMPANIES

An agent of an express company cannot bind the company by an agreement to pay an embalmer's charges for preparing a body shipped from one point to another, according to a decision of the Supreme Court of Texas, reported at page 1185, 145 Southwestern Reporter, in the case of *Gathright v Pacific Express Company*. One Gathright, who lived at Fort Worth, died at El Paso and his remains were delivered to funeral directors, who refused to surrender the remains for shipment to Fort Worth until

payment of their charges. The firm procured the El Paso agent of the express company to telegraph the agent at Fort Worth to arrange for shipment of the body, and some one at Fort Worth, acting for the widow, guaranteed payment of transportation charges, not knowing of the funeral charges. On discovering that the body had not been shipped, the widow went to El Paso, paid the funeral directors and buried her husband. She then sued the express company for failure to ship the body on the guaranty of payment of the charges, but was defeated on the ground that the proof failed to show that the express company agreed to pay the undertaking bill and ship the corpse. It was held further, however, as above indicated, that if the agent at El Paso had contracted to pay the funeral director's charges, the agreement would not bind his company, being outside his authority. It will thus appear that the important point to be remembered by the profession is that no reliance can be made upon an express company's agent's promise to collect at the destination of a body, the amount due the funeral director preparing the remains for shipment.

SECTION 81 LIABILITY OF EMPLOYERS

A decision of the Oklahoma Supreme Court is to the effect that, under the statutes of that state, a coal company in whose mine miners lost their lives is liable for the burial expenses, where the dead men left no relatives or friends to care for their bodies. This decision in the case, which is reported at page 117, 128 Pacific Reporter, under the title *Kali Inla Coal Company v Craig*, is broad enough to charge employers generally with liability for funeral expenses where an employe is killed on the employer's premises and where there are either no surviving relatives or they refuse to undertake the burial. It appeared that plaintiff, Will D Craig, a funeral director, at Hartshorne, Oklahoma, was requested by defendant to take charge of the bodies of four Italians who were killed in defendant's mine, and did so. The coal company, having refused to settle Mr Craig's claim, he brought suit and succeeded both in the trial court and on appeal. Referring to a claim by the company that it had no charter power to "bury dead miners," the Supreme Court said: "With such contention we have but little sympathy, especially in such a case as this. Had a mule died in the mine, the company would have had no trouble in reaching the conclusion that it had authority to spend money taking it out and burying it. The fact is established that these bodies—four human beings, whose lives were lost while in the service of this corporation—were lying dead in the mine. The work of the mine could not proceed until they were removed. It was the imperative duty of the company to remove them, and, after their removal, to make such disposition of them as the law of the state required. With most people the common dictates of humanity would have been sufficient to see that decent sepulture be given these unfortunates. It must be assumed, there is nothing in the record to refute it, and the conduct of the company now warrants the assumption, that the corporation acted in the premises only when required to act. This being true, the law provides a method, and fixes the duty of disposing of dead bodies such as these. 'Section 2388, Comp Laws 1909, provides: 'The duty of burying the body of a deceased person devolves upon the persons hereinafter specified Fourth. In case the person upon whom the duty of burial is cast by the foregoing provisions, omits to make such burial within reasonable time, the duty devolves upon the person next specified, and if all omit to act, it devolves upon the tenant, or, if there be no tenant, upon the owner of the premises,' etc. The next section provides that, in case of a person, upon whom the duty of burying is devolved by law, omits to perform his duty, he shall be deemed guilty of a misdemeanor, and shall be punished accordingly, and in addition thereto, be liable to pay to the person performing that duty in his stead treble expenses incurred by the latter in making the burial.

"The record in this case shows that the deceased were Italians. It is not known that they had any relatives or friends, and we shall assume they had none, else arrangements would have been made by them for their burial. No one came to claim them. . . . The foreman, the one highest in authority representing the corporation (and for the time being and purpose he was superintendent, acting on his best judgment), ordered defendant in error to take charge of the dead bodies. Under the circumstances of this case, it was his plain duty to do so. Under the provisions of the statute above quoted, the plain duty also devolved upon the company as it might devolve upon any individual in this state to bury the deceased. The company, if it did not feel liable for the expense, might, and possibly may yet, be reimbursed for its outlay. But primarily the duty rested on it to bury them. For this purpose the foreman, acting as he was, as the superintendent of the mine, in the absence of the regular superintendent, was clothed with ample power and authority to bind the company for the necessary expense in burying the dead bodies. As such acting superintendent he made the contract with Craig, and the company is liable for the expense thus incurred."

The rule that in an emergency of extreme urgency a foreman may bind his employer by the employment of medical or surgical treatment for an injured person has no application to the employment of an undertaker to prepare a body for burial, and where a foreman unauthorizedly employs a funeral director to care for the body of an employee killed in the employment, the master is not liable unless he ratifies such employment. This is the gist of the decision of the Arkansas Supreme Court in the case of *A. V. Wills & Sons v Irby*, 249 Southwestern Reporter, 562. The court said

"There are many authorities on this subject, but we have not been able to find any case where liability was imposed for anything except medical or surgical treatment in such an emergency. It has never been applied to attention to the dead, and it ought not to be so applied, for the reason that the preparation and burial of the dead is not an emergency of such immediate and pressing urgency as calls for quick action like the case of the alleviation of suffering of an injured person, or to prevent death from ensuing. In case of injury to a person it may be a question of hours, or even moments, and the emergency does not justify any delay whatever, but the death of a person creates no such emergency, however great the necessity eventually of burying the dead. It is a matter, in other words, which will wait a few hours, or even longer, giving time to communicate with those upon whom the burden of the occasion should rest.

"The doctrine being one wholly of necessity and involving the imposition of a legal burden where, under other circumstances, there could be nothing more than possibly a moral obligation, it should not be extended beyond the circumstances which first gave it rise."

In the case of *Perazzo v Wallick*, 121 New York Supplement, 313, it was decided by the Appellate Term of the New York Supreme Court that the evidence was insufficient to entitle plaintiff, a funeral director, to recover against defendant funeral expenses covering the burial of an employee on order of co-employee. The text is

"The plaintiff, an undertaker, has recovered a judgment against the defendant for expenses incurred in the burial of one Bierman, who was a cook employed at the Hotel Cadillac. It is not claimed that the defendant ordered the services performed by the plaintiff, but it is sought to hold him upon the theory that he ratified the action of a steward in the hotel. There is no evidence to show that the steward was the authorized agent of the defendant. While the evidence is far from clear, it tends to show that the defendant was secretary of a company that managed the Hotel Cadillac. In the absence of evidence that the defendant was a proprietor of the hotel, there was no reason for the conclusion that the conversation with the defendant constituted a ratification of the employment of the plaintiff. It may be that, upon a new trial, this defect in the proof can be supplied; but the evidence now before us fails to show either that the defendant ordered the plaintiff to perform services for him or that he ratified the action of the steward of the hotel in employing the plaintiff."

SECTION 82 LIABILITY OF COUNTIES, ETC., FOR BURIAL OF POOR

In contracting with a public officer or board to bury the body of the poor a funeral director is presumed to know whether that officer or board has legal authority to contract with him. Thus it is important that in case of doubt as to the authority of public authorities to make such contracts a funeral director should take legal advice; otherwise he may find that he has no collectible claim for his services. Usually this authority is conferred in clear terms upon county authorities, by statute, but occasionally the authority appears in doubtful language. For instance, it has been held in Pennsylvania that a law of that state empowering school boards to abate any contagious disease prevalent in their districts, authorizes them to contract with a funeral director for the burial of a poor person who died of small-pox.

Under a statute providing that a county board or county court shall allow such sum as it shall deem reasonable, for the funeral expenses of any person who shall die within the county, without means to pay his funeral expenses, it has been declared by the Missouri Supreme Court that where a man dies leaving sufficient means to provide for his burial, there is no authority for making his funeral expenses a charge against the county, although the property left is all such that, under the statutes, it passes to the widow as her own absolute property, free from liability for debts of the estate. (*Handlin v Morgan County*, 57 Mo. 114.)

In the earlier case of *Duval v Laclede County*, 21 Mo. 396, the same court decided that, under the laws above mentioned relating to the burial of the poor, where an individual voluntarily takes charge of the body of an indigent person, without authority from the county officials, he is not entitled to reimbursement by the county for funeral expenses incurred. In this case, the court said:

"Here, the duty of the county to maintain its poor, including within it, as we have remarked, the duty of providing for their burial, when dead, is created by statute, and

did not exist before; and the statute that imposes it has provided in what manner and by whom it shall be performed. The county court, upon the knowledge of any of its justices, or upon the information of any justice of the peace, are to make the necessary orders. The providing for the poor of the county is an administrative duty imposed upon this tribunal, and we are to presume they properly discharge their duty, but if, in any instance, they fail to do so, the remedy is not by the interference of private persons, voluntarily providing the relief or doing the act."

In the last cited case, Mr. Justice Scott dissented from the majority decision in the following language:

"The sixth section of the act to provide for the support of the poor prescribes that the county court of the proper county shall allow such sum as it shall think reasonable for funeral expenses of any person who shall die within the county, without means to pay such funeral expenses. This section, I conceive, makes it the imperative duty of the county to pay the reasonable expenses of burying its poor. The law did not intend to give a discretion to the court, whether it would pay or not. For the sake of humanity, it intended that every man who would bury the decaying bodies of the poor should be paid. In such cases, there is no time to wait—there is no time to consult or ask advice, and therefore the law promises to pay anyone who will bury the body. If the law was such that the party would only be paid in the event the county court thought proper to do so, the dead body, in many cases, might go unburied, or buried in such a manner as would be a disgrace to humanity. The law, out of respect to our mortal remains, assures every one who will bury the body of a poor person, unable to pay his own funeral expenses, that he shall absolutely be paid for it."

In the later case of *Handlin v. Morgan County*, above cited, the court intimated that this reasoning of Justice Scott was sound, but held that the decision of the majority of the court, having stood as the law of the state for many years, without the legislature attempting to amend the statutes, the legislature must have regarded that decision as properly interpreting the legislative intention.

It has been held by the Nebraska Supreme Court that a funeral director who interrs a body at the request of a coroner is entitled to compensation therefor, although an inquest was unnecessary. (*Darling v. Box Butte County*, 111 Northwestern Reporter, 470.)

Many of the states provide for the burial of the bodies of honorably discharged soldiers, sailors and marines of the various wars in which our country has engaged. Usually the expense is to be borne by the county and is very much limited. Some of the statutes extend the provision to the bodies of widows of such soldiers, etc. It is also commonly provided that surviving relatives may conduct the funeral if they are unable to pay the burial charges. For detailed information concerning these laws the statutes of the several states should be consulted.

The Kansas law is typical in its provisions. It makes it the duty of the county commissioners in each county to designate the township trustee, or, for good reason, some other person, in each township, "whose duty it shall be to cause to be decently interred" the body of any honorably discharged ex-union soldier, sailor or marine, who served in the Civil War, and the body of his wife or widow, where any such person dies without leaving sufficient means to defray funeral expenses. "Such burial shall not be made in any cemetery or burial ground, or that portion of any burial ground used exclusively for the burial of the pauper dead." In such cases, the expense, not exceeding \$50, is made a proper charge against the county in which the deceased soldier, sailor or marine had his last residence. The surviving relatives may conduct the funeral, if they so desire, but not if they are able and unwilling to bear the expense.

By separate statute similar provision is made for burial of deceased soldiers, sailors or marines of the Spanish-American War, the Philippine Insurrection and the Expedition to China, and provision is made for removing the bodies of persons of these classes from pauper burial grounds where they may lie interred. This law contains the same provisions limiting the expense of each burial to \$50 and permitting surviving relatives to conduct the funeral at county expense if they are unable to bear the expense themselves.

An interpretation placed upon the Kansas law by the Supreme Court of the state interests funeral directors in general, as well as those doing business in Kansas in particular, since the language of the statutes in question closely follows that of laws in several other states. The Supreme Court's decision was handed down in the case of *State v. Hogan*, 55 Kansas Reports, 150, and the court said:

"It is plain that the legislative purpose was that one who had borne an honorable part in the defense of our country and its institutions during the late war, and who died without sufficient means to defray funeral expenses, should receive a respectable burial. The language employed clearly evinces the intention that such persons should not be

buried at the lowest possible contract rate that the county might be able to obtain, nor that their remains should be treated or interred like those of paupers. . . . If there are no surviving relatives who desire to conduct the funeral, then the person designated by the county commissioners would be invested with discretion to determine the kind of casket that would be used, the means of conveyance to the cemetery, and what should be supplied for the purposes of burial, provided that the expenses of the same should be kept within the sum of \$50. On the other hand, if the surviving relatives desire to conduct the burial and are unable or unwilling to pay the charges therefor, the statute specifically provides that they shall be allowed to do so, and the reasonable expenses of the same up to the sum of \$50 must be paid by the county. In such a case the relatives will order the means and facilities for a decent interment, and control the same free from the superintending control of the agent of the county, but the charges therefor can never in any case exceed the sum of \$50, and all concede that the maximum amount is exceedingly moderate. When the burial is controlled and conducted by the relatives, the bill of expenses for the same must be presented to the county commissioners, who can then determine whether the deceased was an honorably discharged ex-union soldier, sailor or marine in the late war, and also whether he left sufficient means to defray funeral expenses. These questions having been determined in the affirmative, the account for expenses is to be audited and paid, the same as other accounts against the county are audited and paid."

SECTION 83 LIABILITY OF ESTATES IN GENERAL

NOTE Reference to the liability of estates for funeral expenses has been incidentally made in preceding sections of this chapter

The general rule is that an estate left by a deceased person is liable for the expense of his or her burial to a reasonable amount. In the absence of a contrary showing, there is a presumption "that funeral expenses are incurred on the credit of the estate of the deceased" (81 Northeastern Reporter, 285.) But, as will be seen in succeeding sections of this chapter there are important qualifications of this rule. For example, it has been decided in several cases that if a funeral director furnishes supplies or services upon the order and credit of a third person, he should look immediately to that person for payment.

In settling rights arising under a decedent's estate, the Supreme Court of Utah has said:

"Funeral expenses, as a general rule, although paid by a person other than the administrator, may, nevertheless, be a legal charge against the estate. In 2 Woerner's American Law of Administration, sec 357, it is said. "It is clear that, if the executor voluntarily pay them (funeral expenses), he must be allowed credit for the disbursement as expense incidental to the administration, because the funeral is a work of necessity, as well as of charity and piety, and, if this duty, in the absence or neglect of the executor, is performed by another, not officiously, but under the necessity of the case, the law implies a promise to reimburse him for the reasonable expenses incurred and paid" (Dunn v Wallingford, 155 Pacific Reporter, 347.)

An executor is entitled to pay the reasonable funeral expenses of his decedent, even though there be no clause in the will expressly requiring him to do so (Surrogate's Court, Bronx County, N Y; In Matter of Young's Estate, 157 New York Supplement, 494.)

Said the California Supreme Court

"Claims for funeral expenses are not necessarily founded upon contracts made by the personal representative (the executor or administrator). It is seemly and proper, indeed necessary, that decent burial should be given to the body of a deceased person within a very short period after death. Ordinarily, arrangements for such burial must be made, and the expense incurred, before the appointment of the executor or the administrator. An undertaker is justified in furnishing the necessary service upon the request of anyone so related to the decedent as to exclude the idea of officious interference. The one ordering the burial may or may not be the same person who subsequently becomes executor or administrator. If, as in this case, the person alleged to have ordered the funeral does not become the executor or administrator, the liability, if any, of the estate is not affected one way or the other by such circumstance. The person contracting for the service may be individually liable therefor, but this liability depends upon his individual agreement, and not upon his subsequent representative character."

If the funeral director extends credit personally to one who orders the services or supplies there is no valid claim against the decedent's estate (Lucas v Hessen, 17 Abbott's New Cases (N Y), 271.)

In a New York case, Van Orden v Krouse, 89 Hun 1, it appeared that a funeral director conducted the burial of a wife, without being specially employed by a

representative of her estate for that purpose. The husband being insolvent, the funeral director sued to impress a trust upon land owned by the wife to secure payment of the bill for the services rendered, but the Supreme Court decided that there was no warrant for such procedure under the circumstances. This decision should operate as a warning to funeral directors to see that some responsible person backs the promise to pay funeral expenses. If a funeral director looks to the estate, he should obtain the promise to pay of one of the representatives of the estate. On the other hand, if he intends to enforce a claim against a surviving relative on an independent promise to pay, he should see that that person is solvent and that a binding promise to pay is made.

In the settlement of a deceased person's estate by the Bronx County, N. Y., Surrogate Court, it appeared that the decedent was a member of a fraternal association, and that, as such, a death benefit accrued upon his death. The constitution of the association provided that, upon the death of a member in good standing, the sum of \$200 should be paid to those defraying the expenses of the funeral, and it further provided that any remaining part of the benefit should be paid to decedent's widow, eldest child, or parent. Decedent's widow received the \$200 benefit and paid the funeral expenses. In the settlement of her accounts as administratrix she claimed the right to keep the benefit and to charge the estate with the amount of the funeral expenses, but the court denied her right to do so, saying:

"The charge against the estate for funeral expenses was not justified, unless the estate was also credited with the amount of the death benefit" (In re Shanley, 160 New York Supplement, 733.)

SECTION 84 WHO MAY BIND ESTATE BY FUNERAL ARRANGEMENTS?

An outsider, one other than the administrator or executor, may lawfully incur expenses for the proper interment of the dead and recover for that expense the amount thereof, provided he is not a mere interloper, and provided the expenses are reasonable and suitable to the estate of the decedent.

This declaration of an important rule bearing on the validity of funeral directors' charges against estates was made by the St. Louis Court of Appeals in the case of *Cape Girardeau Bell Telephone Company v. Hamil*, 160 Missouri Appeal Reports, 521.

"Says the Supreme Court of North Carolina, treating of funeral expenses and quoting other cases, in *Ray v. Honeycutt*, 119 N. C. 510, 1 c. 512: 'They bind the assets, independent of any promise by the executor or administrator, to the extent that they are proper to the estate and rank in life of the deceased.' They are more in the nature of charges upon the assets in the hands of the personal representative than as debts against the estate.

"In *Patterson v. Patterson*, 59 N. Y. 574, 1 c. 583, and following, it is said that the law implies a promise, on the part of the executor, to pay one who in the absence or neglect of the executor, from the necessity of the case, incurs and pays such expenses. In this case Judge Folger, who delivered the opinion of court quoting *Patterson, J.* as holding in *Brice v. Wilson*, 3 N. & M. 512, that 'there is no case which goes the length of deciding that if the funeral be ordered by another person, to whom credit is given, the executor is liable,' quotes the same judge in *Green v. Salmon*, 8 Ad. & Ell. 348, as limiting this to mean that the executor is not liable to the undertaker where credit had been given to another, and that 'if it lays down more, the law stated is extra judicial.' In 3 *William on Executors*, supra, top page 302, pp. 1679 to 1681, that recognized authority, at page 304, says referring to *Brice v. Wilson*, supra: 'But the learned judge, in this case, probably intended to lay down no more than that the executor, where credit has been given to another person, is not liable to the undertaker, for it should seem, that if the person, who gives the order for the funeral, pays for it, he may have an action against the executor for the reasonable expenses.'

"In *Patterson v. Patterson*, supra, Judge Folger calls attention to the fact that the expenses of probate of the will precede the formal authority to the executor, but are always allowed to him on an accounting. He continues (1 c. 585) 'So should funeral expenses be. The decent burial of the dead is a matter in which the public have concern. It is against the public health if it does not take place at all, . . . and against a proper sentiment, that it should not take place with decency. The Revised Statutes, already cited, impliedly gives discretion that the executor, even before probate, shall pay the funeral charges, and notwithstanding the statute setting out the order of payment, if he follows that direction or that authority, the amount will be allowed to him as part of the expenses of his trust, with the restriction always that the amount is no greater than is necessary. And if they are paid by another than the executor, and reimbursed by or collected of the latter, there must be the same result.'

"In *McClellan v. Filson*, 44 Ohio St. 184, 1 c. 187, the case of *Patterson v. Patterson*,

supra, is referred to and quoted from very fully and approvingly. In *McClellan v. Filson*, supra (1 c 189), the court quotes approvingly the language of Judge Cooley, in *Sears v. Giddey*, 41 Mich. 590, where the eminent judge says 'A funeral cannot be delayed for judicial inquiries to determine upon whom the moral obligation to proceed with it rests most heavily'

"In *Dampier v. St. Paul Trust Co.*, 46 Minn. 526, Judge Collins (1 c 527) states it as the settled law of this country, as well as of England, 'that an executor or an administrator, having sufficient assets in his hands, is liable upon an implied promise to a third person who, as an act of duty or of necessity, has provided for the interment of a deceased person, if the funeral was conducted in a manner suitable to his station in life, with proper reference to the means of the estate, and the charges are fair and reasonable' Judge Collins quotes many authorities in support of this proposition

"The Supreme Court of Maine, in *Fogg v. Holbrook*, 88 Me. 169, says (1 c 172), referring to funeral expenses as charges against the estate of a decedent 'when such expenses are incurred, necessarily after the death of a person, there is no one legally authorized to represent the estate. The service must be rendered and necessary articles furnished immediately, it is better that these things should be done upon the credit of the estate, than that there should be hesitation and inquiry as to who is liable to pay'

"In *France's Estate*, 75 Pa. St. 220, 1 c 225, it is held that where parties other than the administrator or executor discharge the duties connected with the burial of the deceased, and that 'when they do properly discharge them, and incur and pay the necessary expense, without objection on the part of the executor, his assent must be presumed, and the estate be held liable for the amount paid' As applicable to the facts in the case at bar, it is also to be noted that the Supreme Court of Pennsylvania further says in that same case (1 c 225 and following) 'Nor does the fact that the widow said to a stranger, she did not intend any one else to pay the expenses, and that she did it voluntarily out of respect to her husband, constitute any bar to her right to recover them'

"In *Sullivan v. Horner*, 41 N. J. Eq. 299, where a very full consideration of English and American cases and of text-writers will be found, it is said (1 c 300): 'An executor is bound to provide for his testator's decent and appropriate Christian burial. Not only do the usages and necessities of society require this at his hands, but it is the requirement of the law also. Decent Christian burial is part

of the individual rights of every one. The estate in the hands of the executor or administrator is bound by law for the payment of the expense of the decent interment of the decedent, and the executor or administrator, if he has sufficient assets, is liable upon an implied promise to another person who, as an act of duty or necessity, has provided for the interment, if the funeral was conducted in a manner suitable to the rank in life of the decedent, and the charge is fair and reasonable' Further along (1 c 302), it is said 'From an early day it has been held that a stranger who furnished a funeral for a decedent does not thereby make himself executor de son tort'

"From these cases it will appear that an outsider, one other than the administrator or executor, may lawfully incur expenses for the proper interment of the dead and recover for that expense the amount thereof, provided he is not a mere interloper, and provided the expenses are reasonable and suitable to the estate of the decedent. There is no pretense in the case at bar that these expenses of the funeral were unreasonable or out of proportion to the estate of the decedent.

"Applying the principle announced in them to the facts in the case at bar, it is in evidence in this case that the administrator and family of the decedent knew of the fact that the undertaker was furnishing the casket and doing the other matters for which the charge is made, at the instance and on the credit of plaintiff. It is in evidence that the administrator, after his appointment, knew of the fact of the payment of his bill by plaintiff. His attorney testified he stood ready to pay it. There is not a particle of evidence that he at any time prior to this action repudiated it or that any of the family of the decedent made any objection whatever to it.

"It is true that in the case at bar the so-called assignment from the undertaker to plaintiff is without consideration and, as an assignment, is of no force or effect. But this is a proceeding before the probate court, where matters of form or technicality are not important and where cases are to be determined on the real facts. The ultimate facts in this case are that plaintiff's right of action rests on the payment by it of this bill, that this plaintiff, employer of the decedent, seeing him dead on the street, knowing that he had met his death in its service, moved by every principle of humanity and of kindly feeling, directed the necessary arrangements for his decent burial and obligated itself to the undertaker to stand good and pay the amount thereof. Under the authorities cited the undertaker himself possibly could not have maintained this action."

The California Supreme Court was called upon to determine the question whether funeral director's claim for services must be collected by presenting the same to

the deceased person's estate, or whether suit may be maintained against the administrator or executor, if he fails to make prompt settlement. The court upholds the right to sue, but decides that the complaint in the suit must show that the amount charged is reasonable, considering all the surrounding circumstances. The decision was announced in the case of *Golden Gate Undertaking Company of San Francisco v. Taylor*, 141 Pacific Reporter 922. In this case plaintiff sued to recover from defendant, as executrix of her husband's estate, for services performed in connection with the burial of deceased at the request of the physician who attended deceased in last illness and who was authorized by deceased to make the burial arrangements. Defendant based her defense on a contention that a claim for funeral expenses is not recoverable by suit against the representative of the deceased person's estate, but will sustain a suit only against the person who ordered the services. If payment out of the assets of the estate is sought, the sole jurisdiction of the demand rests, it was argued, in the court in which the proceedings for administration of the estate are pending. In refusing to adopt this view, and in reaching the conclusion above mentioned, the court said:

"Claims for funeral expenses are not necessarily founded upon contracts made by the personal representative (the executor or the administrator). It is seemly and proper, indeed necessary, that decent burial should be given to the body of a deceased person within a very short period after death. Ordinarily arrangements for such burial must be made, and the expense incurred, before the appointment of the executor or administrator. An undertaker is justified in furnishing the necessary service upon the request of any one so related to the decedent as to exclude the idea of officious interference. The one ordering the burial may or may not be same person who subsequently becomes executor or administrator. If, as in this case, the person alleged to have ordered the funeral does not become executor or administrator, the liability, if any, of the estate is not affected one way or the other by such circumstance. The person contracting for the service may be individually liable therefor, but this liability depends upon his individual agreement, and not upon his subsequent representative character."

Commenting upon the nature of a funeral claim, the court said "The claim for funeral services is not, to be sure, a claim on a contract or debt of the decedent existing before his death. Neither, as we have pointed out, is it a claim on a contract made after death by the personal representative as such. It is a demand of a peculiar nature, arising immediately upon death, but prior to the commencement of administration. It is properly chargeable, in some form of procedure, against the assets of the estate."

The decision of the Texas Court of Civil Appeals in the case of *Wright v. Harned*, 163 Southwestern Reporter 685, bears on the right of a widow to control the burial of her deceased husband, although she may be separated from him and a suit for divorce may be pending.

One Sunday night, deceased died suddenly in Houston, and his friends, with whom he was riding in an automobile, directed plaintiff to take charge of the body, which direction was carried out. The widow, from whom deceased was separated and who had a suit for divorce pending, was notified by telegraph and wired back to hold the body until her arrival Tuesday night. Thereupon plaintiff was notified of this order, although the body had been embalmed, and was instructed by the wife's nephew not to make further funeral arrangements. Monday the nephew and the temporary administrator called at plaintiff's establishment and selected a \$250 casket, but plaintiff placed the body in an \$1,800 bronze casket. On the widow's arrival she repudiated plaintiff's selection of the casket and directed other funeral directors to take charge of the remains. Plaintiff having refused to surrender the body without the bronze casket, both were taken charge of by the second undertaking firm and the body was taken from that casket and placed in one selected from that firm's stock by the widow. The bronze casket was stored in the firm's warehouse, and, of course, was regarded as having greatly depreciated in value on account of the fact that the body had been placed in it. Payment for this casket having been refused, plaintiff brought suit against the estate, but was defeated both in the trial court and in the Court of Civil Appeals, to which he took an appeal. The important parts of the opinion of the latter court read as follows:

"Appellant concedes that the law accords to the widow or next of kin the right of control of the remains of a deceased person and the first right to determine the disposition thereof. This right is given by law, and is a right superior to that of any other person when the widow or next of kin assumes to act in relation to the disposition of the remains of the deceased. It is true that another than the widow or next of kin may lawfully incur expenses for the proper interment of the dead, and recover for that expense the amount thereof, provided he is not a mere interloper, and provided the expenses are reasonable and suitable to the estate of the decedent. This principle seems to have been recognized by the court below, because the expense incident

to the proper preparation of the body of the deceased for burial, including embalming, was allowed, and rightly so.

Plaintiff undertook to prepare the body, including embalming, and in doing so incurred expenses to the amount of \$175, which, conceding the reasonableness of the charge, as to which appellees made no question, was a proper charge against the estate of the decedent, and was properly allowed. But did he have the right to charge the estate with the value of the bronze casket in the circumstances in which it was furnished? Before he had taken any steps toward selecting a casket, and more than a day before he actually furnished it, he knew that Mrs. Dunn had been informed of her husband's death, and that she had instructed her kinsman to hold the body, and that she would reach Houston Tuesday night, he knew that this same kinsman, assuming to act for Mrs. Dunn, had selected a casket The law implies a promise to one who, in the absence or neglect of the next of kin, not officially, but in the necessity of the case, directs a burial and incurs and pays such expense thereof as is reasonable.

But was the act of plaintiff in furnishing the bronze casket done in the necessity of the case? The body had already been embalmed, and its preservation secured in this way, and the placing of it in the casket did not aid in further preservation. . . . The necessity for placing the body in a casket before the arrival of Mrs. Dunn was not urgent, and when plaintiff was informed that Mrs. Dunn would come to Houston immediately he should have assumed that she would direct the final disposition of the remains, including the selection and purchase of the casket in which she desired he should be buried, and the expenses thereafter incurred by plaintiff in ordering the casket and placing the remains therein were incurred at his own risk. Of course, if his acts had been ratified by the widow on her arrival, the estate would have been charged with the reasonable value of the casket, but they were not ratified, but repudiated, and the widow, exercising her legal rights, made selection of the casket in which her husband's remains were interred. It is proper to say, we think, that plaintiff in acting as he did was actuated only by the desire to see that his dead friend was given a funeral commensurate with the financial circumstances and condition in life of the deceased, and in accordance with his request, but the next of kin in this case, who by the death of the deceased came into the control of a fortune of \$300,000, had the right to say that he should have a less elaborate funeral, and they had the right to repudiate those things done by plaintiff, not under stress of necessity, and without lawful authority."

In response to objection made by plaintiff to the action of the trial court in refusing to permit him to show that deceased and his wife had been estranged and that she had sued for divorce, and that deceased had expressed a desire that in the event he should die, plaintiff should furnish him a first-class funeral, the court said: "She was his wife notwithstanding the estrangement and her attempt to be freed from the matrimonial relation, and, as such, had the rights of a widow or next of kin in the disposition to be made of the remains. The fact that Mr. Dunn had expressed to plaintiff the wish that when he died plaintiff should take charge of his body and give it suitable burial is entitled to great weight in considering plaintiff's good faith in doing what he did, but is not controlling as against the wife's superior right to control the interment."

SECTION 85 WHAT ARE PROPER ITEMS OF EXPENSE?

A "funeral" embraces not only the solemnization of interment but the ceremonies and accompaniments prompted by affection and determined by the religious faith and sentiment of the friends and relatives of decedent, "varying from the simple bier to the imposing catafalque, from the informal liturgical service or scriptural reading for the humble, to the elaborate orisons funebres attending the obsequies of the renowned."

A New York court, in giving this definition of a "funeral," for the purpose of determining whether the expenses of a wake were a proper charge against a deceased person's estate, gives effect to well-established funeral customs. (*McCullough v McCready*, 52 Miscellaneous Reports, 542.)

Plaintiff filed a claim for \$71.25 to cover refreshments furnished for a wake following decedent's death, and was allowed to recover against the estate over objections made by defendants that the claim did not fall within the scope of legitimate funeral expenses. In disposing of the case, the Appellate Term of the New York Supreme Court said:

"That the term 'funeral' includes many circumstances and may cover varied outlays needs little research in books at hand. Thus apparel for mourning, not requisite as raiment, but commanded by custom and respect, has been allowed; so, too, have been music and flowers."

Mr. Justice Gildersleeve, one of the judges who sat in the case, dissented, however, from the decision reached by the majority of the sitting judges, in the following language:

"It appears from the allegations of the complaint that the expenses in question were

incurred by a relative of deceased; that they were independent of the undertaker's charges, and were not ordered or authorized by the executors of the will. There is no allegation that the executors failed to properly inter the body of the deceased.

"Where executors fail to bury the remains, the law implies a promise by them to pay one who provides a burial and incurs and pays the necessary expenses thereof. This obligation, according to the decision, rests upon the right of every person to a decent burial after death. . . . The plaintiff herein did not direct the burial nor did he pay the undertaker. His claim is exclusively for refreshments furnished for the wake. . . . We are of the opinion that refreshments on such occasions are not a right of either friends or relatives."

SECTION 86. LIABILITY FOR REJECTED CASKET

The right of a buyer of a casket to reject it and refuse to pay for it, after it has been used, was involved in the case of *Bower's Estate*, 75 Pennsylvania Superior Court Reports, 203. The court reversed a decree of the Orphans' Court in Philadelphia, which had disallowed funeral director's claim against the estate for a casket furnished for the interment of decedent, the executrix's husband.

Immediately following the death of the decedent, his wife, who was the executrix of, and sole legatee under, his will, called on the appellant, Mulligan, a funeral director, to procure a casket for the burial. He accompanied her and her daughter to the Boyertown Casket Co., where she selected a bronze casket. Before accepting it, Mr. Mulligan, Mrs. Bowers and her daughter went to the family mausoleum to find out whether the casket would go into the crypt. They found the crypt very small, but on removing a slab of stone at the back the measurements indicated that the space was large enough to permit the casket to be placed in it. The crypt opens at the side, not the end.

The casket was accordingly bought, the decedent's body was placed in it, the funeral was held under appellant's direction, and following the burial services the casket containing the body was laid in the crypt, and the marble slab closing the front of the crypt was placed in position and sealed. When securely fastened it was found that the slab, although secure and tight, projected about a quarter of an inch beyond the adjoining mausoleum wall, and the cemetery officials told Mr. Mulligan it would have to be made level with the wall. He requested them to have it smoothed down as soon as possible, but due to some misunderstanding this was not done. Instead the cemetery officials wrote to Mrs. Bowers that the marble front of the crypt had not been properly replaced, but stated that the matter could be remedied by the funeral director and the stonemason who replaced the crypt front.

Mrs. Bowers at once notified Mr. Mulligan, who said he would take care of the matter. She insisted, however, in addition that appellant take the casket out of the crypt, open it and show it to her, so that she could see the body again. Appellant told her he could not do this unless he had a permit from the State Board of Health—the cemetery was in Montgomery county—and that it would probably take a week to secure it; then when he got the permit from Harrisburg he would open the casket for her. Mrs. Bowers, or her daughter acting for her, replied if that was necessary they would attend to that themselves.

Without communicating with Mr. Mulligan, she went to another funeral director, who seems to have been advising her, and in the course of two months they secured or had made a copper casket slightly narrower, had the marble slab removed and rubbed thinner, so that it would not project, got a permit from the State Board of Health, opened the crypt, took out the casket, and removed from it the body which had lain in it for two months and placed it in the new casket, which was put in the crypt and the marble slab replaced and cemented. She sent the first casket to a storage warehouse and refused to pay appellant his bill for the same. The Orphans' Court disallowed his claim.

Reversing the decree of disallowance, the Superior Court says:

"The learned auditing judge seems to have been misled by the inferences drawn by Mrs. Bowers and her daughter, and the statements of counsel who then represented the estate, that the Board of Health had complained and required the slab to be leveled with the wall of the mausoleum, for he said in his adjudication that the note from the cemetery authorities had been sent in conformity with the regulations of the Board of Health. The evidence failed to show that the Board of Health had anything to do with the notice. It was sent by the cemetery people on their own motion and showed on its face that the trouble was not serious and could be easily remedied. It is true that Mrs. Bowers and her daughter had several times referred to the matter as if the notice had come from the Board of Health, but it clearly appears that they were referring solely to the letter from the cemetery, which was offered in evidence and which did not mention

the Board of Health. It was Mrs Bowers's insistence on having the casket removed from the crypt and opened that brought the Board of Health into it, as that could only be done after such a permit had been secured. No permit was necessary to smooth down the slab.

"Mrs Bowers had a right to demand that appellant fix the marble front so as to comply with the cemetery rules, but she had no right after the funeral was over to demand that he open the crypt, remove the casket, open it and let her view the body. That was not part of his contract, and it was her insistence upon these matters that caused all the trouble.

"Much of the testimony in opposition to the claim was proven unworthy of belief by the very sensible suggestion of the auditing judge that the parties and their counsel should together go and measure the first casket. It was found that the two caskets were of precisely the same length, though the second one was slightly narrower in width and lower in height, and that the casket was in good condition except for a slight dent in the moulding at the bottom, so that the testimony as to the first one being much too long and handles pulling out etc., may be disregarded.

"The appellant bought and used the casket which the appellee selected, after measurements had been taken showing it would go into the crypt. It did go in, leaving, however, a slight projection of the front slab, which could be easily remedied and which appellant was entirely willing to fix.

"But because the appellee insisted on having the crypt unsealed, the casket removed and opened and the body of her husband shown to her, which under the law required a permit from the State Board of Health, and appellant could not immediately secure it, she arbitrarily discarded the casket which had held her husband's remains for two months and no one else would want to use, and substituted another for it, and then refused to pay for the casket she thus chose to reject.

"She could do this if she wanted to, but it furnished no justification for refusing to pay the bill which she had contracted with the appellant.

"The decree is reversed at the costs of the appellee, and the record is remitted to the Orphans' Court with directions that appellant's claim, less the cost of fixing the front marble slab, be allowed and distribution made accordingly."

SECTION 87 REASONABLENESS OF BILL

An estate is liable for *reasonable* funeral expenses, considering decedent's station in life and the means left by him. Where credit is given, not to the estate, but to some surviving relative or other person, that person is liable for the amount agreed to be paid, regardless of the reasonableness of the expenditure, considering decedent's station in life. Where credit is extended to such person, but no amount is agreed upon, he is liable for the value of services and supplies furnished by the funeral director. The reason and scope of the first rule—that as to the liability of the deceased's estate—will appear below. The rule in the second case—as to liability of a living person who has agreed to pay the bill—is merely an application of the general principle that a person who has agreed to pay a certain amount for services and materials is liable for that amount, regardless of any extravagance in the expenditure. And the third rule is a part of the general principle that where a person agrees to pay for services or goods and no amount is fixed as the price, he is liable for the reasonable value of the services and materials, according to the charges usually made in similar cases.

"The estate of a decedent is liable for the reasonable expenses of his burial.

What shall be the reasonable expenses of funeral or burial for reimbursement from the estate, and what items may be properly included in such a charge, must depend largely upon the station in life of the decedent and his family, and the condition of his estate, and justice to creditors as well as to the surviving family demands that there shall be no extravagant outlay to their loss." 18 Cyc 437, 438.

In the following cited cases, allowances for funeral expenses have been held not to have been excessive, considering decedent's station in life and the estate left by him:

Kittle v Huntley 67 Hun (N Y) 617, 22 N Y S 519.

Allen v Allen, 3 Dem Surr (N Y) 524.

Campbell's Estate 9 Pa Dist 729, 21 Pa Co Ct 480.

Reason and the decided cases show that the interests of the heirs and of decedent's creditors are the principal factors in determining whether the funeral expenses are excessive. The law provides that such expenses shall be reasonable only for the purpose of preventing dissipation of a deceased person's assets in a foolishly extravagant manner to the loss of creditors who have just claims against the estate, and of the lawful heirs. If there are ample funds to pay all the debts and the heirs assent to the funeral arrangements, I find no decision holding against the right to recover what the admin-

istrator has reasonably agreed to pay, or the reasonable charges of the funeral director if no price has been agreed upon

The Mississippi Supreme Court said in the case of *Ridgeway v Jones*, 87 Southern Reporter 461

"The account filed by the executor shows expenditures for funeral expenses and tombstone amounting to the sum of \$715. This expenditure is attacked by the appellants as being unreasonable and excessive, but the reasonableness of these funeral expenses is a matter which is addressed to the judgment and discretion of the chancellor, and if, upon investigation, the chancellor is of the opinion that this expenditure is not excessive, these items may be allowed when proper vouchers therefor are produced and filed."

An estate cannot be made liable for more than a reasonable funeral bill merely because the executor or administrator agreed to pay a certain amount (*Durkin v Langley*, decided by Massachusetts Supreme Judicial Court, 46 Northeastern Reporter, 119.)

In *re Wingersky's Estate*, 134 New York Supplement 877, 75 Miscellaneous Reports 79, it was held that there can be no recovery in excess of reasonable funeral expenses, even though the estate's representative may have agreed to pay a larger amount.

In the case of *Flynn's Estate*, at page 874, 134 New York Supplement, 874; 75 Miscellaneous Reports of New York, 87, the court held that where a funeral director, in seeking to enforce a claim against an estate fails to establish a specific promise to pay him the amount of his claim, he is entitled to recover a reasonable amount to cover his proper charges. The court said:

"Frequently the cost of burial equals the entire estate of the deceased, who may nevertheless leave infant children or a widow unprovided for if the estate is wholly absorbed by a too costly instrument. I am thus forced by their importance to give such matters close attention, no matter how trifling relatively the estate may be. Extremely nice questions often arise in proceedings like this. One of the practical difficulties in such proceedings is that contracts for funerals are ordinarily made by persons differently situated. On the one side is generally a person greatly agitated or overwhelmed by vain regrets or deep sorrow, and on the other side persons whose business is to administer to the dead for profit. One side is, therefore, often unbusiness like, vague and forgetful, while the other is ordinarily alert, knowing and careful. These are extremely nice questions of law, and just here I think I detect indications of a way by which relief from excessive charges may be afforded to these poor families, at least in those instances where there is no express contract. But I am not without doubts on many points. There is much room for discussion and full consideration, as I do not wish to be unjust to the undertaker and make any unwarranted assumption."

In the case of *In Re Kierman*, 77 N. Y. S. 924, an infant who left an estate of several thousand dollars was magnificently buried in a casket costing \$300. The court, however, cut the sum asked for to \$175 on the ground that that was the reasonable expenditure under the circumstances.

An instructive, and also amusing, case is that of *Estate of Cullen*, 8 Pa. Sup. Ct. 494. The decedent was a domestic servant whose estate amounted to \$1,167.36. The funeral expenses totaled \$810.00. Needless to say the expectant heirs were somewhat disappointed at seeing their prospects disappear into the funeral director's pocket. The sad part of it, however, was that they were not content to nurse their dissatisfaction in private but appealed to the court for aid. The court held the amount grossly excessive and in its place allowed only \$200. In so doing it announced: "Only such sums will be allowed for funeral expenses as will bear a just, fair, and reasonable proportion to the amount of the estate of the decedent and his station in life. Children, legatees and creditors will all be protected against exorbitant bills for funeral expenses." In commenting on the items and amounts of the bill the court observed:

"While the magnificence of the surrounding ceremonies and cost of her interment might well have gratified her vanity, yet we can but think the lavish outlay of expense would have been a severe shock to her notions of thrift and economy. She certainly never contemplated her remains would repose in a cedar couch casket, heavily draped, lined with white silk, with raised name plate, oxidized and gold extension bar handles and silk pillow at a cost of \$500. nor that an imposing cortege of twelve carriages would be provided, together with six professional pall bearers, each adorned with a buttonhole bouquet, while the procession of mourning relatives numbered but five persons, but not similarly ornamented. This was evidently an oversight."

Of course, when the estate is solvent the rule of reasonable expenditures is much more strictly enforced. At the ancient common law the expenses in such instance were limited to the expense of the coffin, the fee for the ringing of the bell and the fees of the parson's clerk and the bearer and the items for pall and ornament. Needless to say this classification is now obsolete but nevertheless it is well recognized that funeral ac-

counts are rigidly scrutinized in the case of insolvent estates, and, as has been said by the Pennsylvania court in the decision before discussed, funeral directors take the risk of the estate proving insolvent.

This hazard of reasonable expenses, however, is somewhat compensated by the principle that a man cannot, even by express direction in his will, so limit his funeral expenses as to preclude decent burial. In *Re Gallands Estate*, 92 Cal 293.

Of course, if the funeral is conducted according to the arrangements and orders of some living person, the funeral director, in case his account is partly disallowed, would have recourse against such person for the balance and this naturally suggests a consideration of who is primarily liable for funeral expenses and how such liability is enforced.

The courts are frequently called upon to determine the reasonableness of a claim against a deceased person's estate for funeral expenses, although the underlying rules of law have been well settled for some time. These rules were summoned up by the Iowa Supreme Court in a case in which that court held that an allowance of \$455 to a funeral director was excessive, although the deceased left an estate of about \$5,000, where it appeared that he occupied an humble station in life, having been a janitor (93 Northwestern Reporter, 344.) The details of the funeral were arranged by the undertaker, who presented the following bill to the administrator for payment:

To washing and embalming body ..	\$ 25 00
Shaving ..	5 00
Burial robe ..	20 00
Burial shippers ..	3 50
Casket ..	425 00
Use of candelabra ..	5 00
Chairs and candles..	2 50
Hearse ..	10 00
Wagonette ..	4 00
2 landaus, at \$4.	8 00
2 three-seated carriages at \$4.	8 00
Personal services ..	10 00
	<hr/>
	\$526 00

Payment of the bill having been refused, the funeral director sued and recovered judgment for \$455. On appeal by the administrator, the judgment was reversed, and a new trial ordered, subject to the undertaker's right to accept \$150 in satisfaction of his claim. The important part of the Supreme Court's opinion reads as follows:

"The law with reference to such matters is well settled, and generally understood. Such charges are not, strictly speaking, debts due from the deceased, but charges which the law out of decency imposes upon his estate. And, so far as they are reasonable in amount, they take legal priority of all such debts, as, likewise, do the administration charges. A decent burial should comport with the social condition of the deceased and the amount of his fortune. Justice to creditors, as well as to one's surviving family, demands, however, that there should be no extravagant outlay to their loss. If due regard to the character and social or public standing of the deceased requires a more costly funeral, public or private, liberality should defray the additional cost. Of course, one who furnishes reasonable burial equipment should be allowed the value thereof from the estate of the deceased, although it was not ordered by the administrator, or authorized by him. But whatever is furnished should reasonably comport with the station in life of the deceased and the amount of his property. The privilege thus granted should not be construed into a license to plunder the estate. Lynch was a Catholic, and his burial was in accordance with the customs and rites of that denomination. This, of course, was perfectly legitimate, but it is not shown, nor will we infer, that such customs call for gold trimmings or silk and satin linings of the casket. Our observation has led us to believe that this Christian denomination requires no more expensive funeral corteges for its members than any other. Seriously, the matter of a man's faith has little to do with the expenses of his funeral. It may, of course, call for some additional properties, which the law, out of regard for its policy of religious freedom, will consider as necessities. But the mere religious faith of one deceased adds nothing to the value of what is or should be furnished. We may readily agree that all the items mentioned in the bill were of such a character that they should have been furnished without being bound to accept the prices affixed as reasonable. That is to say, the deceased needed embalming, he needed proper clothing for burial, candelabra, chairs, candles, carriages and proper services. But this burial robe need not be of satin, nor his casket metallic. The only evidence from plaintiff as to the value of

the items furnished was, 'They are all reasonable' He admitted on cross-examination that he had never heard of a more expensive robe than the one he furnished; that he never put as good a robe as this one on a corpse before or since, that he had sold caskets from \$6 up to \$200 and \$250, and that he had never before or since sold one for \$425; that the casket he furnished was made of oak, broadcloth and glass, and covered with broadcloth, and that it was trimmed with what is known as silver and gold-plated trimmings. It was shown in the evidence introduced by defendant that the customary price for the use of a hearse was \$5, that plaintiff paid but \$3 apiece for the landaus, \$3 each for the carriages, \$3 for the wagonette, and borrowed the candelabra, for the use of which he paid nothing. It was also shown that the usual price for embalming was \$10, that the usual price of a casket for such cases was from \$40 to \$60, that \$5 would buy a very nice robe, and that there was no charge for personal services when the body was embalmed. The testimony leaves no doubt in our minds that plaintiff gave Lynch the best he had, without any regard for expense, thinking, perhaps, that, as there were no known relatives, there would be no one to object. Manifestly, this does not comport with a modest estate of less than \$5000, nor with the station deceased had in business or society. The mere statement of the case condemns the claim more efficiently than any argument can make."

In closing, the court finds that in such a suit a general statement by a witness that a bill of funeral expenses is reasonable is not binding upon the jury or court if it is manifestly out of proportion to the amount of deceased's estate and his position in society.

In the case of *O'Donnell v. Slack*, 123 California Reports, 285, the court said:

"In such a case as this, neither the court in probate nor the personal representative has any right to the body of the deceased, nor any right to control the manner of disposing of the remains, nor to dictate the place of interment. The proper expenses of such disposition may well be a charge against the estate, but the duty and right of burial are quite different things from the duty and right of auditing and paying the expenses of such burial."

Incidentally, it is to be noted that the courts have decided that where, as in this case, the "next of kin" consist of more than one surviving relative, the wishes of the brother or sister, constituting such next of kin, who has stood upon the most intimate terms with the deceased should ordinarily be respected.

And that where the nearest surviving relative is not present at the death and the necessities of burial require some one else to make the funeral arrangements, the estate is liable for the reasonable value of all funeral supplies and services necessarily furnished on the order of such other person, has been decided by the Texas Court of Civil Appeals, in the case of *Wright v. Harned*, 162 Southwestern Reporter, 685. It was even decided in that case that the estate would have been liable for bronze casket ordered by deceased's friend, except for the fact that the deceased's widow, on arriving at the place of death before there was any necessity for having placed the body in a casket, repudiated the selection. The court said: "Of course, if his acts had been ratified by the widow on her arrival, the estate would have been charged with the reasonable value of the casket, but they were not ratified, but repudiated, and the widow, exercising her legal rights, made selection of the casket in which her husband's remains were interred."

A decision handed down by the Tennessee Supreme Court sounds a warning to funeral directors of the importance of having distinct contracts with customers as to who is to be liable for funeral bills and as to the amounts to be paid. (201 Southwestern Reporter, 515.)

The same decision also adds another case to the already lengthy list of judicial authorities to the effect that an estate will not be held liable for more than reasonable burial charges.

Plaintiffs, a firm of funeral directors, sued to recover \$1,322 for funeral charges, seeking to hold decedent's executors and one Wynne personally, on the ground that he had OK'd the bill.

The trial judge allowed judgment against the estate for \$700, but refused to hold Wynne responsible. In affirming this judgment, the Supreme Court said:

"Attached to the bill is an itemized account of the claim. The largest of these items is \$1,000 for a black cloth, copper-lined casket. It is admitted that this casket cost the complainants \$307. Thus it appears that on this single item the profit sought is \$693. There is no proof adduced as to the reasonableness of the other items, but it is quite apparent to the court that the prices charged for many of these articles are excessive.

"We think the claim is exorbitant, and that the chancellor was correct in disallowing it. His decree for \$700 in favor of the complainants is full compensation for the services rendered and articles furnished for the burial of the deceased.

"There was no occasion for an expensive funeral. The proof shows the estate was less than \$10,000 in value, and that, for a number of years prior to his death, the deceased

was an imbecile and an inmate of an asylum. An expenditure of \$1,332 for the funeral of such a person is an unwarranted extravagance.

"It is the law in this state that, in the absence of any direction in the will, an executor or administrator has the right to use his discretion in incurring funeral expenses; however, the amount must be reasonable. *Gooch v. Beasley*, 137 Tenn. 407, 193 S. W. 132. *Steger v. Frizzell*, 2 Tenn. Ch. 369. What good can be accomplished by a lavish expenditure of money for such a purpose?"

"Defendant Wynne is sought to be held personally liable upon the ground that he selected the casket and after the burial wrote 'O. K.' upon the bill. He admits he selected the casket, but denies that anything was said about his paying the expenses of the funeral, and that when he wrote 'O. K.' upon the bill he was suffering intensely from a recent injury and had no idea that complainants desired to fix liability upon him.

"We are of the opinion that, before the person who makes arrangements for the burial of another is held liable for the expense incurred, it should distinctly appear that such person agreed to pay the debt. Funeral expenses are a debt against the estate of a decedent, and, even where the estate is insolvent, by statute, . . . are made a preferred claim.

"When a person dies, frequently relatives, friends or neighbors make the funeral arrangements, with no thought of incurring personal liability for the payment of the expense, to hold that the performance of this humane service, generally actuated by motives of esteem for the deceased and a desire to relieve the bereaved family of the unpleasant duty, makes such a person liable for the undertaker's claim, would be subversion of justice."

The opinion of the New York Supreme Court in the case of *Kittle v. Huntley*, 67 Hun, 617, is of particular importance because of a holding that the question as to what supplies cost a funeral director, as between himself and a wholesale dealer or the manufacturer, is not a proper matter for inquiry on a dispute as to the reasonableness of an undertaker's bill rendered to a customer. On this point the court said:

"It is insisted by the learned counsel for the appellant that it was competent for him to inquire into the price of casket as between the manufacturer or wholesale dealer, and the undertaker or retail dealer, and that the witnesses should have been compelled to answer that inquiry, or their testimony given on the part of the plaintiff stricken out.

"We are not prepared to subscribe to that doctrine, as applied to this case where the article of merchandise, as in this case, had a market value, as fixed by the trade, as between the undertaker and his customers. The cost-price between the manufacturer and the undertaker would not in such a case furnish a correct criterion as to the price between the undertaker and his customers, and an inquiry into it would lead to unsafe and unprofitable speculation on the part of the court or jury as to the rate of profit which should be charged by the undertaker, and would not be evidence of the market value between the last-named parties, that value must be measured by the market price between the undertaker and his customers as regulated by competition, and the law of demand and supply.

"While a wide range of inquiry should be allowed on the cross-examination of a witness as to the value of property when its value is in dispute, we think it should be confined to the market value which is actually the subject of inquiry between the parties when sold at retail, and not the price as between the wholesale dealer and the retail dealer as was sought to be proved in this case."

The heir or legatee of a deceased person is apt to have very economical ideas as to how much money should be expended on account of the interment of the remains of his benefactor, especially where pressure of the bill has the effect of diminishing the sum to be inherited, or derived from the legacy.

So, when the funeral director looks to an estate to satisfy his claim he need not be surprised if some heir or legatee objects to the reasonableness of his bill. It is very important to remember that if such objection be made the Probate Court will be bound to disallow so much of the claim as may appear to be unreasonable.

A case in point was decided by the Surrogate's Court for Bronx County, New York, in the matter of *Kingston's estate*, 182 New York Supplement, 528. In this case legatees objected to an item of \$342.50 in the accounts of the executor, covering the bill of the funeral director. It does not appear from the case just how large an estate decedent left, excepting as some idea of its value may be derived from the fact that her will provided for the payment of three \$1,000 legacies, and the remainder of her estate to her surviving husband. But since the legatee objected to the allowance of the undertaker's bill for \$342.50, it may be inferred that there was not enough left to discharge the \$3,000 in legacies. But, whatever was the pecuniary condition of the estate, the Surrogate decided that \$342.50 was not an excessive funeral bill. On this point the opinion says:

"What is a fair and reasonable amount to be expended for the funeral of a decedent depends upon the facts of each particular case. No arbitrary rules can be laid down in such matters, as is evident from an examination of a few of the many matters in which the question has arisen. *Matter of Young*, 92 Misc Rep 631, 157 N Y Supp 494, and cases cited, *Matter of Shipman*, 82 Hun 108, 31 N Y Supp 571, *Matter of Meuschke*, 61 Misc Rep 9, 114 N Y Supp 722; note to *Matter of Smith*, 75 App. Div. 339, 78 N Y Supp 130, in 11 N Y Ann Cases, 427. In this matter I do not deem the amount expended to be so large as to require me to interfere, and the objection to the item (a) is dismissed."

According to a decision of the New York County Surrogate's Court, in the case in re Crawford's Estate, 144 New York Supplement 565, a deceased person's estate is not liable for more than a "reasonable" amount for funeral expenses, even though there is a contract for a larger amount. What are "reasonable" expenses is to be determined by decedent's station in life and the size of his estate. The court's opinion reads, in part: "The undertaker's remedy would seem to be to resort to the Supreme Court on the express contract." The court holds that the funeral director could probably recover against the relatives who contracted for a more expensive funeral than decedent's station in life warranted, the difference between the amount allowed against the estate and the contract price. Proceeding, the judge says: "Here the jurisdiction of the surrogate [probate judge] must by the terms of the Code, be confined to ordering the personal representatives [the administrator or executor] to pay only so much of the funeral expenses as the law adjudges reasonable."

But the only contention over the bill made before me is as to the one item—burial casket. For the burial casket the undertaker asks \$395, but the cost to him is shown to have been not more than \$215. Doubtless an undertaker is entitled to some profit in his business and to add a reasonable percentage to costs for the upkeep of his establishment. This element was not much gone into at the hearing. I should say \$50 above the cost of the casket would be enough to cover profit and reimburse the undertaker for actual outlay.

There are other items on the undertaker's bill, such as decorative palms, which I am inclined to think objectionable. They should have been paid by those ordering such decorations."

In this case, it appeared that decedent was separated from his wife at the time of his death, and his mother and brother seem to have been most active in ordering an expensive funeral, although the executrix—presumably the wife and chief beneficiary of the estate—was present at the time the funeral was ordered.

In winding up a New York estate, a surrogate allowed an item of \$381.50 for funeral expenses proper, saying "The funeral expenses are perhaps larger than were necessary, but they seem to have been contracted in good faith; and although deceased never earned large wages, yet he had accumulated \$7,000 or \$8,000, and was somewhat prominent among his fellow Germans" (*In re Meuschke's Estate*, 114 New York Supplement, 722.)

In the same case an item of \$120 for widow's mourning clothes is disallowed, because no vouchers were filed showing actual payment by either the executor or the widow, but the court recognizes the validity of such a claim when properly presented. Says the court on this point: "The reason for the allowance as part of the funeral expenses is found in the fact that it is almost the universal practice for the members of the family of a deceased person to wear mourning, and a change of apparel is thus rendered necessary as part of the preparation for the funeral and as a mark of proper respect for the deceased. This expenditure should only be allowed, however, in behalf of those members of the family for whom the deceased was bound to provide, and should be moderate in amount."

In a New Hampshire case thrifty relatives of deceased presented claims for expenses in attending the funeral, but in disallowing them the Supreme Court said "Now it seems to us that these were services to the performance of which true affection would always prompt, without any expectation or desire of pecuniary remuneration. Economy would suggest that if mourners must be hired at a funeral, it would be better to procure those as near by as possible, and thus save paying their fare, and it would seem to be much more in accordance with the common notions of propriety, if men must be procured for pay to perform such services, that indifferent strangers be selected, rather than brothers and sisters. Tears that flow to order, and are shed for a price, should find no place when men stand around the death-bed or the coffin of parents or children, brothers or sisters."

A similar demand was disallowed by a New York court in the following words: "This is a most extraordinary demand. The plaintiff has expended nothing. It was conceded, upon the argument, that the executor has paid all the expenses incurred, and what the plaintiff seeks to recover is compensation for searching for the remains of his wife's cousin; for requesting the clergyman to perform the burial service; for

writing the advertisements for the funeral, and sending them to the newspapers; and for the use of his house for the deposit of the coffin for a few hours, for the assembling of the mourners and the performance of the burial service, and I suppose for attending the funeral, which I apprehend is what he means when he says that he attended, with the undertaker, to the laying of the remains in the burial vault. Such a demand would have been remarkable had the plaintiff been a stranger to deceased; but presented by a man whose house the decedent was in the habit of making his temporary home, with whom he had been on terms of personal intimacy for nearly fifteen years, and who was his wife's cousin, it is extraordinary, and to the credit of humanity it may be questioned if such a claim was ever before presented in a court of justice."

A few years ago a probate judge at Anaconda, Mont., conceiving that there was a tendency to incur excessive funeral bills, adopted rules intended to curb the practice. The following is a table showing the value of some of the estates that had been probated in the court and the undertaking bills that had been filed in those cases, respectively:

Appraised value	Funeral bill
\$3,400 00	\$868 00
5,629 75	873 10
8,663 39	600.00
4,110.00	504.25
4,556.59	566.10
1,200.00	410.00
1,000.00	458.00
2,036.50	336 50
651 20	255 50
1,286 15	234 50
880.00	593.00
1,922.15	303.00
1,425.00	284 00
3,900.00	393 75
700 00	304.60

The rules promulgated by the court were as follows:

Rule A—No claim or demand for funeral expenses must hereafter be approved or allowed by any executor or administrator until it has first been presented for allowance to the judge of the court for examination and approval, and all such claims and demands shall in every estate be reasonable and comport with the station and condition in life and the circumstances of the estate of the deceased.

Rule B—No claim or demand for funeral expenses will hereafter be allowed in any estate where the same has been contracted for by some person or persons other than an heir of the estate or some member of the family of the deceased, unless the same has been contracted for with the knowledge and approval of the representative of the estate or some heir or member of the family of the deceased.

Rule C—Except in cases where the circumstances justify other and further allowance and except in extraordinary cases, the following schedule of charges for funeral expenses will be deemed reasonable charges therefor, to-wit:

- In estates valued at not to exceed \$1,000, \$175
- In estates valued at from \$1,000 to \$2,000, \$200
- In estates valued at from \$2,000 to \$3,000, \$225
- In estates valued at from \$3,000 to \$4,000, \$250.
- In estates valued at from \$4,000 to \$5,000, \$275
- In estates valued at from \$5,000 to \$10,000, \$300
- In estates valued at from \$10,000 to \$20,000, \$350

By the words funeral charges and expenses used herein is meant all such charges as have heretofore been included in the claims and demands presented to executors and administrators by undertakers and funeral directors, such as for casket, grave box, candles, gloves, hearse, carriages, pallbearers, rigs, cemetery lots, opening and lining grave, preparing body for burial, underwear, hose, suit, shaving, embalming, funeral notices, flowers, services of undertaker, church services and all other expenses of every kind and description whatsoever connected with the funeral and burial of the deceased.

SECTION 88 LIABILITY OF ADMINISTRATOR

Where the assets of an estate in the administrator's hands over and above the homestead exemption in favor of decedent's family are insufficient to pay the expenses of administration, of deceased's last sickness, and of the funeral, he has no right to apply

any part thereof to the payment of general debts. (South Carolina Supreme Court, In the matter of Worley's Estate, 26 Southeastern Reporter, 949.)

An administrator is personally liable for the expenses of decedent's funeral, where he has in his hands assets sufficient to pay the same. (New York Supreme Court, *Benedict v Ferguson*, 44 New York Supplement, 307.)

In the case of *McCoy v Inhabitants of Town of Natick*, 129 N. E. 381, the Massachusetts Supreme Court holds that "the first duty of the executrix was to bury the decedent in a manner suitable to the estate which he left, and this has been held to include the purchase of a suitable burial lot and the funeral expenses."

In the case of *Kittle v Huntley*, 67 Hun, 617, decided by the New York Supreme Court, plaintiff sued to recover \$127 on account of supplies and services furnished in the interment of a deceased woman of whose estate defendant was executor. A defense interposed with that the bill was not incurred by the authority of defendant.

Affirming judgment in plaintiff's favor, the court said: "The law seems well settled that an executor or administrator of a deceased person is liable for the suitable and reasonable burial expenses of the testator or intestate, if he have assets sufficient for that purpose, and if such personal representative, by reason of absence or neglect, fail to furnish such burial in the first instance, he is liable to the one who incurs such expenses, so far as he has assets of the deceased in his hands."

The court finds that the evidence abundantly showed that credit was not extended to the third person who had employed plaintiff to conduct the funeral, and that an expenditure of \$127 was not excessive, considering decedent's station in life.

SECTION 89 PRIORITY OF FUNERAL BILLS OVER OTHER CLAIMS

In an opinion which shows the reasons on which the law gives priority to funeral bills over other claims against the estates of decedents, with interesting sidelights on history, the Surrogate's Court for Oneida County, New York, observed in the case of *Tierney's Estate*, 151 New York Supplement, 972:

"Civilization from the earliest days has provided for the burial of the dead. History deals with the tombs of the antediluvian worthies, Abel, Seth, Noah and Ham. Sheikh Mohammed grew rich by representing to the passing public the tomb of an ass as that of a noted saint. Even animals have recognized the beneficence of such a custom. It is recorded that, when Paul the Hermit died, two lions issued from the desert to dig his grave, uttered a long howl of mourning over his body, and then departed.

"The general tendency of mankind has always been to bury the dead out of the sight of the living. Amongst the ancients an unburied body was held to be disgraced, and the spirit was unhappy until a kindly stranger at least threw a few handfuls of earth on the corpse. Long before the Pilgrim Fathers began to worry, work, freeze, and sweat upon our shores, the common law of England gave to every person the right to be buried in his parish church yard. In England the common law cast the duty of burying the dead upon the person under whose roof the death occurred. *Scott v Riley*, 40 Leg Int 382.

"In Blackstone's time, English civilization had reached a point where the law required an executor or administrator to bury the deceased in a manner suitable to the estate which he left behind him. 'Necessary funeral expenses are allowed previous to all other debts and charges.' *Sharswood Black Com*, vol 1, book 2, p 508. In the United States, neglect to bury a dead body by anyone whose duty it is to bury it, and having sufficient means to do so, is a misdemeanor. Section 306 of the Penal Code provides:

"Except in the cases in which a right to dissect it is expressly conferred by law, every dead body of a human being lying within this state, must be decently buried within a reasonable time after death."

"The dead having a legal right to be buried, and it being a misdemeanor not to bury a dead body, and it being the duty of a person under whose roof one dies to see that burial is given, it must be the law contemplated reimbursement therefor. Where the owner of some estate dies, the duty of the burial is upon the executor or administrator.

"In the case at bar there is some estate, hence it is the administrator's duty to take a reasonable portion of that estate to compensate the undertaker for the burial of the dead body, or whoever paid the undertaker for such services. There is no doubt but that the reasonable and necessary expenses of interment of the body of one deceased are a charge against his estate, though not strictly a debt due from him, and this is based upon the general right of every one to decent burial after death, which implies the right to have his body carried, decently covered, from the place where it lies to a cemetery or other proper inclosure, and there put under ground.

"To a claim for the payment of such expenses by an executor, the objection does not lie that the rule of distribution of assets will be improperly interfered with if the

claim is allowed and paid. Unless there is some objection arising out of statutory provisions, these expenses must be preferred to all other debts, . . . not excepting debts due by record, even to the sovereign.' *Patterson v. Patterson*, 59 N. Y. 574, 17 Am Rep 384

"A funeral bill is classed the same as the expenses of probate and other expenses of administration, and must be first paid out of the estate, and this has long been the law of this jurisdiction

"In paying the debts, the order prescribed by the rules of common law is to pay, first, funeral charges and the expenses of at the probate office, next, debts due to the state; then, debts of record, as judgments, recognizances and final decrees.' etc 2 Kent Comm (Lack's Ed) 416.

"Without attempting to cover the evolutionary period of the common and statutory law from Kent to the present Code of Civil Procedure, I call attention to section 2729 of said Code, subdivision 3, which provides in part as follows

"Every executor or administrator shall pay, out of the first moneys received, the reasonable funeral expenses of the decedent, and the same shall be preferred to all debts and claims against the deceased,' etc

"This section enables the undertaker to force payment of his claim within 60 days after the grant of letters testamentary or of administration, provided there is in the hands of the representative of the estate sufficient money applicable thereto. No such remedy is furnished any other creditor or claimant, indicating clearly that a funeral bill is the first claim to be paid, except expenses of administration. Said section further provides:

"If upon any accounting it shall appear that an executor or administrator has failed to pay a claim for funeral expenses, the amount of which has been fixed and determined by the surrogate as above set forth, or upon such accounting he shall not be allowed for the payment of any debt or claim against the decedent until said claim has been discharged in full; but such claim shall not be paid before expenses of administration are paid'

"From the foregoing provision, it seems clear that a representative of an estate shall first husband sufficient of the estate to pay administration expenses, such as procuring his appointment, his commissions, and expenses of accounting, and whatever is left, if any, shall be next used to pay 'the reasonable funeral expenses of decedent' "

The right of a claim for burial expenses to a preference over the claims of judgment and general creditors, where decedent's estate is insolvent, was fully treated in a New Jersey case. Decedent in that case and his wife and child having been killed in Texas while temporarily absent from New Jersey, his creditors contended that in no event could their claims be subordinated to the claim for funeral expenses, beyond the reasonable cost of burial in Texas. This contention was overruled by the court, and it was judicially declared that \$650 was a reasonable allowance for transporting the three bodies from Texas to New Jersey and interring them. The court said in part "An executor is bound to provide for his testator decent and appropriate Christian burial. Not only do the usages and necessities of society require this at his hands, but it is a requirement of the law also. Decent Christian burial is part of the individual rights of every one. The estate in the hands of the executor or administrator is bound by law for the payment of the expenses of the decent interment of the decedent, and the executor or the administrator, if he has sufficient assets, is liable upon an implied promise to another person who, as an act of necessity or duty, has provided for the interment, if the funeral was conducted in a manner suitable to the rank in life of the decedent, and the charge is fair and reasonable. Funeral expenses are by the common law to be first paid out of the assets, and they are by law, in England, preferred in payment to a debt due the Crown, and, in this country, to a debt due to the United States government. By our statute they are among preferred claims, as they are at the common law. The statute does not destroy the absolute preference the common law accorded. The reason for such absolute preference still exists in full force." Construction of the statute as giving judgments rendered against decedent during his lifetime preference over claims for funeral expenses, "might give to the judgment creditor of an insolvent decedent the entire property of the debtor, and leave his body to be buried at public expense

It would subordinate the demands of society, in the very important matters of medical aid in sickness and decent burial after death, to the claim of a creditor, and thus the insolvent might be compelled, . . . at his death, to go to a pauper's grave, furnished at the public's expense . . . The dictates of humanity, no less than the decencies of enlightened society, demand that the reasonable funeral expenses and the physician's bill of the last sickness of a deceased debtor be preferred in payment to all other claims or debts." The same reasoning was applied to the part of the claim covering the cost of transporting and burying decedent's wife and child. Continuing, the

court said: "The case under adjudication differs essentially from that in which a husband or father furnishes the funeral and dies without paying for it. In the latter case, the unpaid claim for funeral expenses would not be a charge upon his estate, but merely an unpreferred debt. . . . The expense of the funeral must, in such case (where decedent dies insolvent), not only be reasonable but should be only such as is necessary for a funeral conducted in a plain manner, and without superfluous accessories which would be allowable in case the estate were solvent. The rule, as against a creditor, is that no more shall be allowed for a funeral than is necessary, and, in considering what is necessary, regard must be had to the degree and condition in life of the decedent. When the decedent dies away from home, it is reasonable that his body should be brought home for interment. And to the expense of such transportation may be added that of a person to accompany the body for the purpose of superintending such transportation."

Funeral expenses are preferred to debts due the United States (*United States v. Eggleston*, 25 Federal Cases, No 15,027), judgments (*Holbert's Succession*, 3 Louisiana Annual, 436, *Sullivan v. Horner*, 41 New Jersey Equity Reports, 299, 7 Atlantic Reporter, 411; *Parker v. Lewis*, 13 North Carolina Reports, 21), claims secured by trust deeds or mortgages on other assets (*McLane v. Paschal*, 47 Texas Reports, 365), and delinquent rents (*Ritter's Estate*, 11 Philadelphia Reports, 12; *Salvo v. Schmidt*, 2 Speers Reports [South Carolina] 512).

In some states the statutes giving preference to funeral expenses include expressly or by implication the funeral expenses of the decedent's wife and children. The courts of Louisiana and New Jersey have so decided. In a New Jersey case a husband's estate was held liable, as a preferred claim, not only for his funeral expenses, but also for the expenses attendant upon the burial of his wife and children who were killed with him in a common disaster.

But in every instance the funeral bill should be promptly presented to the executor or administrator as there are decisions to the effect that priority of such claims may be lost by delay in filing.

In the case of *Cape Girardeau Bell Telephone Company v. Hamil*, 160 Mo. App. 521, the St. Louis Court of Appeals said:

"From the beginning of legislation in our state, funeral expenses of a decedent are given priority over all other claims, not even excepting the expenses of last sickness, debts including taxes due the state, the county or a municipality, judgments, and all demands, without regard to quality, which should be legally exhibited against the estate within one year after the granting of the first letters on the estate. All demands, including funeral expense, exhibited after the end of one year, and within two years after letters are granted are placed in the sixth class. . . . As it appears beyond question that this demand was not exhibited within one year and apparently was exhibited within two years, after the granting of the letters, it lost its classification in the first class and would be remitted to the sixth class. While funeral expenses are by this provision of law pretermitted from classification in the first class, the obligation of the estate for them is in no degree affected. The whole spirit of our law proceeds upon the theory that they are charges which the estate of the decedent—if he has any—must bear. The probate court is commanded, on final settlement, to allow 'all reasonable charges for funeral expenses' . . . Independent of any statute and at common law 'Funeral expenses,' says Lord Coke, 'according to the degree and quality of the deceased, are to be allowed of the goods of the deceased, before any debt or duty whatsoever' . . . From the very nature of the thing, funeral expenses are not of the character of the debts of the deceased, for they accrue after his death, yet from very necessity proper funeral expenses are the first charge upon the assets in the hands of the executor or administrator, being preferred at common law. So our statutes treat them, unless the claimant, by his own laches (delay) has neglected to exhibit them within the period prescribed."

The well-known saying that "delays are dangerous" applies to enforcement of undertakers' claims against estates. No time should be lost in observing statutory requirements concerning the filing and allowance of probate claims. The claims may not be legally lost by delay, and yet may become involved in litigation causing expense to establish its validity. Such was the case in *Walley v. Rollins*, 68 Missouri Appeal Reports, 298, where it was decided that a demand for funeral expenses against a Missouri estate which was exhibited to the administrator within the first year of the administration did not lose its right to payment as a preferred claim, although it was not presented to the court for allowance until after that time, but within two years. Referring to the Missouri laws in force when the decision was handed down, and relating to the allowance of claims against decedents' estates, the court said:

"Section 189 of the statute requires executors and administrators to keep a list of demands exhibited, classifying them, and to make a return thereof at each settlement. They are not required to make a settlement until the end of the first year after the grant

of letters, at which time they can determine, from the list of demands exhibited to them and classified, what demands belonging to any of the five classes, whether up to that time presented for allowance or not, there are in existence against the estate. They know that all the claims that have not then been exhibited will, under the statute, have to be assigned to the sixth class. The statute in relation to the administration of the estates of deceased persons is so plain and simple in its provisions that it can be understood by any business man of average intelligence."

Since this decision was handed down the Missouri laws have been amended so that they now provide a shorter time for the presentation of claims.

Under the laws of the state of Mississippi, delay in filing a claim against a decedent's estate on account of expenses of his funeral, may forfeit claimant's right to a preference over the claims of creditors in general, holds the Supreme Court of the state in the late case of *Merchants' and Farmers' Bank v. Kelleher*, 80 Southern Reporter, 697.

One Phillips died insolvent and the plaintiff bank filed an unsecured claim within the time specified in a notice given for the filing of claims. After expiration of such time, claims for funeral expenses, last sickness, and other items entitled to preference under the law if seasonably filed, were filed and allowed. As the total of these preferences claims exceeded the assets of the estate available to pay decedent's debts, plaintiff stood to lose its claim under an order of the chancery court. But an appeal to the Supreme Court resulted in a reversal of the order, the higher court saying:

"The requirement of section 2117, Code of 1906, 'that all claims must be filed with the clerk by the day named in the notice,' and 'a claim, unless filed with the clerk by the day named in the notice, shall not be allowed, but those not filed with the clerk shall not be barred as to any surplus that remains after paying in full those filed,' is mandatory, and is applicable in the case before us. The claims for the expenses of the last sickness and funeral cannot be allowed, except out of any surplus that might remain after paying those claims which were filed, unless such preference claims be duly filed by the day named in the notice as required by the statute."

In the case of *United States v. Eggleston*, 4 Sawyer's Reports 199, the United States Circuit Court for the District of Oregon held that, in settlement of an estate, a claim for funeral expenses takes priority over a claim due the United States. A statute of the United States provides that, in settlement of an insolvent decedent's estate, a debt due from him to the United States shall take precedence over other indebtedness incurred by him. The court holds that since a debt due an undertaker for funeral expenses is a debt of the estate and was not incurred in deceased's lifetime, the statute does not apply to such a claim.

When a person dies insolvent in Iowa a claim for funeral expenses, and even a claim for services rendered in his last illness, take priority over an allowance for the cost of a tombstone, according to the decision of the Iowa Supreme Court in the case of *Lester's Estate*, 150 Northwestern Reporter 1033. Lester left only about \$280 assets and claims for \$90 funeral expenses, nursing of decedent in his last illness, and \$125 for a monument aggregated more than the assets. In these circumstances the probate court allowed the claim for the monument, after cutting it down to \$100, but ordered that before its payment the claims for funeral expenses and for nursing should be paid. On an appeal to the Supreme Court this judgment was affirmed.

The funeral director being favored to the extent of giving his claim against a deceased person's estate priority over the claims of general creditors of the estate, an enterprising Kentucky funeral director sought to obtain a court decision to the effect that where there are not enough funds to pay all claims, the funeral bill must be paid even before discharge of mortgages given by deceased in his lifetime. But he failed. In this case—*Milward v. Shields*—the Court of Appeals of Kentucky decided that the lien of a real estate mortgage given by deceased is superior to the claim of an undertaker for funeral expenses of the dead mortgagor. The court said:

"No case has been referred to, or authority cited—and we are confident none can be found—in which it was held that a claim for funeral expenses, which is not a debt against the estate at all, but more properly a credit to the personal representative, is superior to the lien of a mortgage, whereby the decedent devoted so much as might be necessary of certain specified property to the payment of the mortgage debt. The decedent, up to the date of his death, had absolute control of his property. He could dispose of it by deed or mortgage, and, in the latter case, though he did not part with the legal title, he did part with the equity. To the extent that it was necessary, his estate in the property mortgaged was appropriated to the payment of the mortgage."

It is true that when a man dies he must be buried, but it is equally true that while he lives he must be fed and clothed, and when sick he should receive medical attention.

And, if a man have assets, these things should be paid for out of such assets; but, if not, the state provides poorhouses, hospitals and pauper burial. There is no reason

why a claim for one of these things more than another should be permitted to override the contract rights of a mortgagee."

In this case reliance was placed upon the principle of law which has been applied for several hundred years in England and in the United States from the beginning of our government, having been announced by Lord Coke, that funeral expenses, according to the degree and quality of the deceased, are to be allowed out of the funds left by him, before other debts, and that if no funds or personal property is left in sufficient amount, then such expenses shall be allowed out of the proceeds of real property. But the Court of Appeals holds that this rule does not go to the extent of giving a funeral claim priority over a mortgage. The court considered at length the statute in force in Kentucky to the effect that when the personal estate of a decedent is insufficient to pay all claims, then burial expenses shall be paid in full before any pro rata distribution is made among other creditors. The court holds that this law does not change the rule above stated.

Under the statutes in force in California, in settlement of a deceased person's estate funeral expenses rank as a debt of the estate similar in character to other debts, but payable in preference to all other debts, and they must be paid as soon as the executor or administrator has sufficient funds applicable to that purpose. In reaching this conclusion in the matter of the estate of Magorty, 146 Pacific Reporter 430, the Supreme Court of California decided that a probate court may order payment of funeral expenses before allowance or payment of commissions to the executor or administrator.

A decision of importance to funeral directors, relating to their claims against the estates of deceased persons on account of funeral expenses was handed down by the North Dakota Supreme Court in the case of *Elton v Lamb*, 157 Northwestern Reporter, 288. Since the North Dakota laws relating to the settlement of decedents' estates and to the priority of claims for funeral expenses are similar to the statutes of other states, the decision will be of value as a precedent in the interpretation of the laws of other states.

The two principal points decided in the case are that a creditor of an estate on account of funeral expenses is a party to the estate in the sense that he may appeal from an order of the probate court settling the administrator's account to the creditor's prejudice, and that a claim for funeral expenses cannot be defeated by the administrator's act in using up the funds of the estate in paying subordinate claims.

In this case it appears that plaintiff recovered judgment against defendant as administrator on account of funeral expenses, directing payment "in due course of administration." The judgment not having been paid, plaintiff appeared at the hearing of the administrator's accounts and objected to the allowance thereof, on the ground that the administrator had disregarded the statute giving claims for funeral expenses preference above other claims excepting those growing out of administration of the estate. Plaintiff's objections were overruled and he appealed to the supreme court with the result that the judgment was reversed and the objections sustained.

Upholding plaintiff's right to appeal, the Supreme Court says:

"The approval of the administrator's account establishes its validity against the claim asserted by plaintiff, and the only remedy of this judgment creditor is by appeal. The District Court, having but appellate jurisdiction, is devoid of authority to rank or classify the claim or otherwise, except on appeal, disturb the accounting as settled by the order of the Probate Court. The parties were in Probate Court upon a hearing called for the very purpose not only as between the heirs and those who would share in a division of the assets of the estate, but inclusive of creditors of all classes."

On the question of priority of claims for funeral expenses the court adds:

"The portion of the judgment against the administrator for funeral expense is a charge against the estate the same as the expense of administration and under the express terms of Section 8755, C. L. 1913, must be paid next after the necessary expense of administration. It is a preferred charge to be paid in preference to all debts of the decedent, whether secured or unsecured. The administrator's account discloses that over and above the expenses of administration there were many disbursements made by the administrator in the payment of debts secured and unsecured of the decedent amounting to several times the funeral expenses. To this extent the administrator has misapplied the funds of the estate. For this he is responsible, as he had paid these claims without any prior court order establishing the order of preference, and subsequently presented his accounting disclosing such erroneous misapplication of the proceeds of the estate. Beyond all doubt he acted in good faith and had probably at first assumed that the funeral expenses incurred at Washington, D. C., had been paid by the relatives. But under his own testimony he afterwards had notice of the contrary, and that the funeral expenses remained unpaid. as a formal claim was filed with him, while prior to that time the claim had been refused

or its payment neglected . . . As this was a charge against the estate it did not need to be filed as a claim against it other than to be presented for payment in due course. The administrator could not ignore or disallow it, and by disbursing the estate otherwise leave it unpaid, secure an approval of his accounting, and escape liability where the claimant as here presents the claim at or before the accounting and insists upon disallowance of the accounting as made and the payment of the preferred charge. This could not be done any more than could the personal representative refuse to pay necessary expenses of administration and seek to avoid liability for them in his final accounting."

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It was argued by the administrator that the right of priority to which the funeral claim would ordinarily be entitled had been waived by merging the claim in judgment with another claim by the taking of a judgment for the lump sum and that the court must therefore regard the entire judgment as an ordinary demand against the estate and payable as such a claim subordinate to all those for which the estate's funds had been disbursed. The Supreme Court, however, held that the right of priority was not lost and that to comply with the order of the District Court granting judgment upon the funeral claim, the funeral expenses should be paid in due course of administration and to do this it must be paid in the order of preference next after the necessary expenses of the administration of the estate. The Supreme Court further said that it was the duty of the administrator in accounting to disclose that the funeral expenses had not been paid. They went even further than that and said:

"It was likewise the Probate Court's duty to ascertain whether funeral expenses had been paid, and, if not, why not. Even if it be assumed that the appellant was wrongfully trying to obtain a preferential payment of the funeral expenses, the amount of the judgment only approximately one half of which was preferred funeral expenses, nevertheless it was the duty of the administrator and the Probate Court to separate the items and classify them as to priority, and so obey the order of the District Court that they be paid in 'due course of administration' according to priority."

Said the Supreme Court of Indiana in the case of *Hildebrand v. Kinney*, 172 Indiana Reports, 447.

"As to a claim for funeral expenses and burial, we think a different rule should and does apply. They are not debts of the decedent, hence not accounts against him, or his estate, within the meaning of the statutes of limitations. They can arise from no request or obligation of decedent, express or implied, unless it might be under the provisions of a will. They are liabilities or charges against his estate, raised up and imposed by law, as distinguished from obligations arising by some act or promise of the decedent. They stand in the same category as the expenses of administration. An administrator is a trustee for the payment of funeral expenses, because they are impositions of the law, precisely and for the like reasons that he is a trustee for the persons who are entitled to distributive shares of an estate by virtue of the statute of descents, or for creditors of the estate proper."

"Prior to 1883, in case of solvent estates, expenses of administration were in the first class, in the order of payment, and expenses of the last sickness and the funeral constituted the second class, and in case of insolvent estate payments were made in the same order pro rata among designated classes."

Society and the public health require the decent disposition of the bodies of the dead, and this is so far recognized by our statute that *funeral expenses are required to be paid before other claims, which are properly obligations of the deceased.*

The law imposes the duty of the burial of the dead, and it is not an obligation arising out of contract, any more than a judgment is a contract, and, where the duty exists, it may be discharged by kindred, or by third persons, and the law imposes the charge upon the estate. In New Jersey, judgments against a decedent in his lifetime, funeral charges and expenses, and physicians' bills in last sickness, are classed together by statute, as having preference, but in *Sullivan v. Horner*, *supra*, the court gave preference to the funeral expenses over the judgment, upon the theory that the law imposes the duty of burial to the exclusion of the judgment, the estate being insolvent.

"We think that the legislature intended to classify the charges against the estate of decedents, and that the rule is not different with respect to solvent and insolvent

estates, unless specific liens absorb the property, and that this classification as to expenses of administration, and expenses of funeral of the decedent, is an arbitrary one, applicable to those charges which are not debts in the general sense of the word.

"The expenses of administration and of the funeral of the deceased are nearly allied to the expenses of the execution of a trust, liabilities not imposed by contract, but by general principles of public policy

"We think the six-year statute of limitations can no more be interposed to a claim for funeral expenses than to the costs of administration, and it will hardly be claimed that a statute as to accounts can apply to such charges, which do not arise from contract, but by statute

Nor are funeral expenses different from costs of administration, because incurred before administration; for, when the appointment is made, it relates back to the death of the decedent for the purpose of preserving any rights in favor of the estate, and one of the rights, as we have seen, is that of Christian burial.

"The Probate Court has jurisdiction to determine what are reasonable expenses of administration, and for the funeral of decedent, and without a jury, while as to debts arising from an express or implied contract with the decedent, there is a right of trial by jury, clearly referring those charges to the equitable powers of the court, as in case of any other trust relation"

SECTION 90. RIGHTS AGAINST REAL ESTATE

The will of a Pennsylvanian contained a clause reading: "The funeral expenses for me and my wife Polly must be paid from the whole estate, also two tombstones, not too dear." Under this provision the Pennsylvania Superior Court held that the funeral expenses and cost of a monument over the wife's grave were a charge against land left by the deceased husband. (*In re Hunsicker's Estate*, 61 Pennsylvania Superior Court Reports, 9.) The court said:

"We are not at liberty to deny to this clause its reasonably apparent meaning because the testator did not clothe his intention in the language of a skilled lawyer. There can be no doubt of his intent that the funeral expenses of his wife, such as a headstone to mark her resting place, should be provided out of the estate he was to leave."

It is a rule of law with general application throughout the country that where the personal property of a deceased person's estate is insufficient to pay reasonable claims for funeral expenses, the claimants are entitled to have sold unexempt real estate which he owned at the time of his death. As stated by the New York Supreme Court, the mere fact that valid claims exist against the estate largely in excess of the personal property of itself warrants a sale of real estate to pay debts. But, of course under the statutes which make claims for funeral expenses preferred items, a funeral director need not await the process of a sale of land if there are sufficient funds on hand to pay his account according to its legal priority. Under a holding of the Ohio courts, it becomes the duty of an administrator, as soon as he discovers that the personal estate will be insufficient to pay the debts, to apply to the Probate Court for authority to sell the lands for that purpose. Following the same rule, the Rhode Island Supreme Court has declared that it is not necessary that the personal estate be actually exhausted, when it is apparent that it will prove insufficient. And, as decided by the North Carolina Supreme Court, if the administrator neglects to perform his duty in this regard, the creditors of the estate may compel him to do so.

But the New Jersey Court of Chancery has held that the orphan's court, authorized by statute to order a sale of lands of a decedent for the payment of his debts when the personal property of the estate is insufficient for that purpose, was without power to order a sale of the real estate of a decedent to pay the debts and funeral expenses of his wife, although his will gave his estate to his wife for life with provision that, at her death and after payment of the wife's debts and funeral expenses, the property should go to a daughter.

SECTION 91. FUNDS NOT LIABLE

In the course of settling a deceased person's estate in New York, the executor raised an interesting question whether the funeral expenses of decedent should be charged against the general estate or against a fund constituting damages recovered against one through whose negligence deceased was killed. (*In re Huth*, 152 New York Supplement 215.) It appears that decedent left considerable personal property by will, directing payment of the funeral expenses out of this property, and that they were so paid. The question arose on account of the provision of the New York law to the effect that an executor in a suit to recover damages for negligent killing of a

person may deduct from the recovery reasonable funeral expenses. It was decided by the Surrogate that this law has no application where, as in the Huth case, it appears that deceased left a general estate, or where other specific provision has been made for payment of the funeral expenses.

The court further holds that when an executor brings suit to recover damages for negligent killing of deceased he is not entitled to recover funeral expenses as an item of damage unless it appears that the surviving relatives for whose benefit the suit is brought have become liable for such expense.

Under the New Hampshire statute which authorizes an administrator to sue for damages occasioned by the death of the deceased person whose estate he represents, providing that the recovery shall be distributed to the surviving dependent relatives, "less expenses of recovery," an undertaker is not entitled to enforce payment from the proceeds of such a suit to cover his claim against the estate for services rendered in connection with the interment. On the other hand, the general assets of the estate may not be dissipated in the prosecution of such a suit to the prejudice of the undertaker and other creditors of the estate.

These two points were decided in the case of *Davis v Herbert*, 97 Atlantic Reporter, 878, by the New Hampshire Supreme Court.

Plaintiff, a funeral director who buried a man killed in a railroad accident, brought suit to compel the administrator to pay his claim for \$30 out of the proceeds of a settlement made with the railroad company, there being no other assets available for payment of the claim. In rendering a decision, which has the effect of dismissing the suit, the Supreme Court said:

"The question presented is not an open one in this State. The only charges against the damages recovered for wrongfully causing death are the expenses of recovery. The balance 'shall belong and be distributed' to certain beneficiaries. Public Statutes, chap 191, sec 13. The damages are not assets for the satisfaction of creditors' claims against the estate, and the general assets cannot be used to prosecute a suit of this character to the detriment of the creditors.

"It is urged that because the expenses to the estate caused by the injury may be recovered as an element of damage in these suits, therefore the Legislature must have intended such recovery to be for the benefit of the creditors to that extent. The language of section 13 is too explicit to admit of such interpretation. And it takes nothing from the estate or its creditors which belong to them. The statute creates a new cause of action, unknown to the common law, and provides how damages recovered shall be distributed.

"Whether an unpaid undertaker's bill could be deemed an expense 'occasioned to his estate by the injury,' when he left no estate out of which the bill could be satisfied, is a question which is not presented by the facts in this case, and upon which no opinion is expressed."

SECTION 92 LIABILITY OF ESTATES OTHER THAN DECEDENT'S

In the case of *Sullivan v. Horner*, 41 New Jersey Equity Reports, 299, where it was held that, where a father and child were killed simultaneously in a railroad accident, the expenses for burying the child were properly charged against the father's estate. There the court said:

"The dictates of humanity, no less than the decencies of enlightened society, demand that the reasonable funeral expenses of a deceased debtor be preferred in payment to all other claims or debts. *The same considerations apply in this case to the reasonable funeral expenses of the wife and child of the decedent.* . . . Had he survived them, it would have been his duty to bury his wife and child, and the law would have required it at his hands. This duty, which he was unable to discharge, the law, under the circumstances, charges upon his estate. Otherwise, the law, while it secures to the deceased insolvent debtor decent burial out of his estate, would deny it to his wife or child dying at the same time, and would, merely out of consideration for his creditors, leave their bodies to be buried by the hand of charity, and perhaps at public expense. That would be discreditable to the law. In such a case it should be held that, in the interest of society, out of a proper regard to its proprieties and decencies, and to protect the public against the expense, and put it where it of right should fall, the reasonable expense of the funeral of the wife and child may be included in that of the husband or father."

Under the laws of Louisiana it seems to be settled in that State that the estate of a parent is liable for the expenses of his child's burial. (*Alter v O'Brien*, 31 Louisiana Annual, 452.) In this case, the court said:

"This is just: were it not for the privilege which the law allows to those who dig the grave, furnish the coffin and drive the hearse, many a lifeless frame, deprived of sepulture, would rot in unnoted or forsaken homes. Were it not for that privilege, when

Death enters a city and knocks at every door—watchful and indefatigable as it is, Charity would inevitably be unequal to the increased task which otherwise would be imposed upon it.”

Recourse may not be had against the assets of a minor's estate to pay the expenses of interring his father's remains, according to a decision of the Texas Court of Civil Appeals, announced in the case of *Yates v. Watson*, 187 Southwestern Reporter, 548.

In this case the guardian of certain minors was allowed an item of \$19.85 paid by him for services in burying the father of the wards, and \$111.25, expenses for casket, robe, etc., when the claim was presented to the probate court, but the allowance was set aside on appeal on the ground that it was not a proper charge against the estate of the minors.

SECTION 93. ESTATES OF MARRIED WOMEN

See Section 73, where husband's liability is treated.

SECTION 94. FUNERAL DIRECTOR'S RIGHT TO APPOINTMENT AS ADMINISTRATOR

It has been decided that a funeral director is not a “creditor” of an estate against which he holds a funeral bill in such sense as to be entitled to appointment as administrator of the estate, where no heir applies for administration. Referring to a statute common to many of the states, the Washington Supreme Court said in the case of *Sullivan's Estate*, 25 Washington Reports, 435:

“We believe the term ‘creditors’ as used in said section relates only to such as were creditors of the deceased at the time of his death or to holders of obligations created by the deceased himself. The evident purpose of the statute is to give to those who are materially interested in the preservation and application of the assets of the estate as creditors an opportunity to administer where other persons described in the statute do not exist or for some reason have not sought the appointment as administrator. Perhaps the only obligation that can be created against an estate after the death of the deceased, aside from the expenses of administration, is that for funeral expenses. But the holder of such claim is specially protected and his claim is the first that can be paid. There, therefore, does not exist the same reason conferring the right to administer upon such a claimant as that which exists in favor of the creditor.”

CHAPTER XVIII

FUNERAL BENEFIT INSURANCE

SECTION 95. IN GENERAL

The Illinois statutes afford an example of typical provisions regulating funeral benefit insurance. Section 1 of the law provides "That any person, firm, corporation, society or association of individuals engaged in the business of providing burial benefit or award for the payment, in whole or in part, of funeral, burial or other expenses of deceased persons, or of certificate holders, or subscribers, by the levying of an assessment or assessments, or by the charging of a fee or premium, shall, for the purpose of this act, be considered to be conducting a burial insurance society," etc.

Section 2 requires filing with the county clerk of notice of the formation of such a society, within thirty days after its organization. There is a \$5 filing fee.

Section 3 provides that there shall also be filed with the county treasurer in each county in which the society operates or proposes to operate "a sum of money, or securities double in amount of value the amount of the largest single burial benefit or award proposed to be paid . . . ; which said deposit shall be held in trust . . . for the security of the beneficiaries of the members of such burial insurance societies; Provided, however, that upon the dissolution of any such burial insurance society and satisfactory proof of the liquidation of monetary obligations accruing from such society to its members and to the beneficiaries of its members, said deposit shall be returned," etc.

Section 4 is an important clause. It provides that "No person, firm, corporation, society or association operating under or by virtue of this act, shall pay any burial benefit or award, not contracted to be paid in a specific manner, in any manner or thing, other than in currency of the United States; nor shall any member of any burial insurance society, or representative of beneficiary of such member, be obliged (except by contract in writing signed by the member or person sought to be bound) to purchase funeral supplies or burial services from any specified or designated person, firm, corporation, undertaker, undertaking concern, tradesman, or business man, so as to deprive the representative, beneficiary or family of any such member from procuring or purchasing said supplies and services in the open market."

Section 5 forbids the operation of a burial insurance society otherwise than as provided by the act. The state's attorney in each county is charged with enforcement of the law.

Section 6 provides that the act shall not apply to fraternal or fraternal beneficiary societies, nor to assessment, life and accident associations existing or operating under any statute of this state, nor to any society which pays sick or disability benefits and which limits its membership to a particular class of persons or to employees of a designated person, firm or corporation; nor to burial insurance societies now existing which pay, and continue to pay, the full amount of the burial benefit or award in money exclusively and without conditions or limitations as to the method or manner of expending such money, nor to any burial insurance society composed exclusively of the employees of any department of municipal, county, state or national government."

As a practical matter, the important thing to do at the outset, in organizing such a society, is to have the assistance of some good local attorney in preparing, signing, and filing the necessary papers.

Some time ago, as law editor of *Embalmer's Monthly*, I had occasion to make the following observations on a set of by-laws adopted by a burial association in Illinois:

The Illinois statutes expressly authorize the formation of burial insurance societies by any person, firm, corporation, society or association, and declare that subscribers to the funds of such societies shall be deemed to be members. (Laws 1911, p. 370.) But the following things must be done in order to perfect a valid organization: There must be filed with the clerk of each county in which the society does business a written statement showing the name, purposes, plan of operation, and names of the officers. The

statement must be filed within thirty days after formation of the society and a \$5 filing fee must be paid. At the same time there must be deposited with the county treasurer of each county where the society does business a sum of money or securities double in amount or value the amount of the largest single burial benefit or award proposed to be paid by the association, to be held in trust or security for the beneficiaries. On dissolution of the association this deposit will be returned.

An important phase of the law forbids payment of benefits in other than lawful money of the United States, except where there is an express contract with the member or beneficiary as to manner of payment. Unless the member or beneficiary has signed a writing to that effect, the beneficiary cannot be compelled by the association to buy funeral supplies or receive services from any certain funeral director or other person. In the absence of such written agreement, the beneficiary is left free to buy the "supplies and services in the open market."

Section 5 makes it the duty of the State's Attorney of every county to enforce the law in his jurisdiction.

Under section 6 the following societies are exempt from the provisions of the law: existing burial insurance societies which pay benefits in money and without limitation as to methods of expending them, fraternal insurance societies; and burial insurance societies composed exclusively of public employees.

Now, taking up the plan of the particular association to which our correspondent refers, I think there are several weak points which condemn the fairness of the organization. But if members or beneficiaries sign a written agreement to be bound by these phases, I doubt that the association violates the Illinois law. Every man, excepting those who are judicially declared to be insane, has a constitutional right to make a bad bargain for himself.

One article of the by-laws provides for benefits to be paid in "funeral supplies" ranging in value from \$30 to \$100, according to the age of deceased. But the right to collect the benefit is rendered uncertain by this provision: "The above payments to be made only when the treasury contains \$100 or more. When the treasury contains less than \$100, payments will be made in accordance with the funds in the treasury." In other words, the by-laws require the members to pay assessments whenever a member dies, but no member is assured that any benefits will be paid. Fairness would seem to require that even if there should not be sufficient funds in the treasury when a death occurs, the association should pay the agreed benefits as soon as there are sufficient funds. But I see nothing in the Illinois laws to prevent a member from making such an unfavorable contract for himself, if he wants to go into a "jug-handled" deal.

The by-laws will probably be understood by members who do not pay close attention to the provisions as including funeral direction services, as well as supplies, but a reading of them shows that the benefits are limited to "supplies"; the beneficiary must still go to the expense of paying for embalming, use of hearse, etc., and for the funeral director's services.

One clause of the by-laws says that "a beneficiary's funeral supplies may be purchased from any independent firm," but this favorable provision is practically nullified by a subsequent provision that if the supplies are not bought from certain firms twenty per cent of the benefits will be reserved "to pay the cost of handling beneficiary's past sustenance in the association, in accordance with the contract signed by the members." Under the Illinois law, if a person wants to not only take the risk of getting nothing if the treasury is dry, but is willing to agree in writing, in advance, to thus indirectly pay a bonus to buy his supplies wherever he wants to, there is nothing in the Illinois law to prevent enforcement of the contract.

A small flaw in the plan arises from the fact that a ten cents entrance fee is required of every member to be used by the officers to "defray the expense of organizing the association," and yet no provision is made for disposition of this fund after the expense of organization has been met. According to the by-laws, a hundred years from now the officers will still be using incoming money to defray the expense of organizing the company, so far as the ten cents entrance fee is concerned.

Since the law requires a deposit to secure payment of agreed benefits, it is probably true that a beneficiary could look to that deposit even though the treasury might be low, although the courts might hold that this right would be waived by becoming a member on the condition that the amount of the benefits is to depend upon the state of the treasury. But, one-sided as are the other provisions of the by-laws of this particular association, I see nothing to prevent their enforcement if members sign agreements be bound by them.

It is to be noted that the law of Illinois is different from that of Ohio, which has a statute forbidding policies which deprive the beneficiary of the right to procure supplies and services in the open market. The constitutionality of this law was upheld in a

decision of the Ohio Supreme Court. The court said: "Whatever may have been the abuses against which the provisions of this act were directed, it clearly appears from the act itself that the General Assembly of Ohio considered these contracts to be in restraint of trade, and therefore against public policy, and sought to prevent the making of all such contracts, except as they might be expressly authorized by statute." So it was decided in the Ohio case that a policy of burial insurance was not assignable to an undertaker.

The legal status of a burial association as an insurance association has been firmly fixed by a decision of the Kansas Supreme Court, in the case of *State v. Burial Association*, 73 Kansas Reports, 179, wherein it was decided that such associations are subject to regulation as insurance societies and must comply with the insurance laws of the state. Distinguishing burial associations from benevolent and charitable societies, the Kansas court said: "The burial association discloses no charitable or benevolent intercourse, or even ordinary casual acquaintance. The contract with each member is based wholly upon business considerations. The assessments are paid for the purpose of securing thereby a burial worth one hundred dollars. The uncertainty as to when the funeral will take place gives each member good reason to suppose that it will probably be needed long before the assessments amount to the sum which it is expected to cost. We think this association is doing an insurance business, and should comply with the laws of the state."

In the case of *Renschler v. State of Ohio*, decided by the Ohio Court of Appeals in 1914, it was held that Mr. Renschler, a Findlay funeral director, was engaged in the insurance business unlawfully under the following stated facts:

In connection with his undertaking business and to further its volume, Renschler, during the last two years, not acting as a corporation, partnership, firm or association, or as the agent or member of any such, but wholly in his individual capacity as a natural person, entered into certain written contracts with certain other parties of the following nature:

The contract was termed a mutual note, whereby the party of the first part promised to pay to respondent during natural life of first party the sum of fifteen cents (termed interest) on or before the 10th of each month in advance. The face value of the note varied from \$50 to \$100. The contract or note provides that if said first party be not in default at the time of his or her death the second party agrees to furnish funeral for said first party.

There are many stipulations in the so-called mutual note, among which are provisions:

1. That any person in *good health*, from *one* to *sixty* years of age, can purchase one note as follows. One to ten years of age shall pay eight cents interest per month on a \$60 note contract; ten to sixty years of age shall pay fifteen cents interest per month on a \$100 note contract.

2. The object of the note is to provide the holder with a respectable burial, such funeral to be furnished and conducted by the respondent, *his heirs or assigns* only.

3. After period of one year's payments has been completed, the holder may discontinue payments and will receive a credit slip, which slip may be applied on his or her funeral expenses, provided the funeral be conducted by respondent.

4. Note not payable in cash and redeemable for its face value in such goods as handled by the respondent to be selected by his or her friends or heirs making funeral arrangements.

5. If holder of note was not in good health at time of issue or if obtained through fraud it shall be deemed void.

It further appears from the agreed statements of facts that the respondent had entered into a number of such contracts, all, however, confined to the territory within which he operated as funeral director, and that he was receiving payments, termed interest, on mutual notes from many parties both young and old, and has been ready, able and willing to comply with the terms of the contract and as an individual undertaker has in fact complied with the terms thereof on the death of any holder of such mutual note and is now furnishing funeral outfits whenever any of the holders of such notes decease.

It is also made to appear that the respondent had never applied for or received any license or permission to transact any insurance business from the Superintendent of Insurance of Ohio or from any other officer or branch of the state government, nor had he made any report of the nature or extent of his business to the said insurance department.

In *Wallace v. Prudential Insurance Company*, 157 Southwestern Reporter 1028, the St. Louis Court of Appeals recognized the principal object of funeral insurance to be the procuring of a decent burial of a deceased person, without rendering it necessary that undertakers and others having claims for funeral services await the slow process

of putting their claims through the probate court. The court further decided that a statement by an agent who issued the policy involved in that case that it would be paid to whoever produced it, and that it was unnecessary for insured to designate the beneficiary was binding on the insurance company.

In *Wilkins v. Price*, 142 New York Supplement 574, the Appellate Term of the New York Supreme Court, First District, decided that an assignment by a beneficiary of funeral benefits to an undertaker in part payment of his bill for interment of decedent was valid. The insurance in this case was issued by a fraternal society, which resisted liability on the ground that the amount designated by its by-laws as a funeral benefit was a mere gratuity or charity which could be withheld by the society, and that, in any event, the claim for such benefit could not be assigned to the undertaker. Both of these claims were decided against the society. The court said: "If the assignment was made for the purpose of keeping alive the benefit which the association had provided for its members, it was thereby accomplishing the object of the association in creating the benefit, and to such extent and for this reason the assignment would be valid."

The mere fact that it is designated as a funeral benefit is not, in my opinion, sufficient to clothe the benefit with the character of nonassignability.

The assignment in this case was made to the undertaker who had charge of the funeral arrangements of the deceased member in part payment of his bill. It is apparent that the purpose for which the benefit was created by the lodge was to secure the decent interment of the deceased member, and the appropriation of the money by the assignment to that object in effect carried out the purpose of the lodge in creating the benefit, and therefore should be sustained upon that ground, irrespective of the power of the plaintiff to assign the claim absolute on its face and which had ripened into a vested right to which she was entitled."

In a case which was lately before the Kentucky Court of Appeals (*Aul's Administrator v. National Co-Operative Burial Association*, 161 Southwestern Reporter 1123), plaintiff sued the association for \$100, claiming that the deceased person of whose estate he was administrator was a member of the association and held a policy by which the association bound itself to furnish burial at a cost not exceeding \$100 and had failed to do so. The association among other defenses claimed that the administrator and the undertaker who buried deceased had entered into a conspiracy to prevent the association from burying the deceased and had thus injured its standing and membership in the sum of \$300, for which judgment was prayed against them. The association was defeated in the trial court and appealed to the Court of Appeals, which dismissed the appeal, saying:

"The estate of the decedent is in no wise liable for the conduct of Cheatham and James, charged in the answer. This was simply a personal wrong on their part, and the court below properly so held. The matter could not be brought into this action and litigated here."

SECTION 96 RIGHT TO BENEFITS

A by-law of a religious beneficial society to the effect that in case the funeral services of a deceased member shall be conducted by a non-orthodox priest, death benefits provided for by an insurance certificate shall be forfeited will not be applied, where the wife of a deceased member applied to the only orthodox priest in the neighborhood to conduct the services, and, on his refusal to do so, she called in an unorthodox priest who conducted the funeral (*Telech v. Orthodox Catholic Mutual Aid Society*, 63 Pennsylvania Superior Court Reports, 207.)

It was decided by the New Hampshire Supreme Court in the case of *Passaconaway Council v. Dow*, 97 Atlantic Reporter, 878, that where the by-laws of a beneficial association provided that funeral benefits were payable only to legal dependents of a deceased member within the relationship of wife, child, parent, sister, brother, grandparent, or grandchild, a widow was entitled to the benefits of a certificate, although the deceased member had directed payment to an aunt who was not dependent upon him.

In a Delaware case (*Oklahoma Tribe No. 26, Improved Order of Red Men v. Musgrove*, 97 Atlantic Reporter, 867) the Superior Court of Delaware decided that before recovery may be had under a certificate providing for funeral benefits the claimant must exhaust all reasonable steps to secure allowance of her claim by application to the association. Courts will take jurisdiction only when the claimant has complied with the by-laws of the order and the claim has been rejected.

SECTION 97 MISREPRESENTATIONS IN APPLICATION

Plaintiff made written application to a Georgia "burial" corporation for a contract wherein it was to be agreed that, upon the death of his wife, a "burial outfit" of certain value would be furnished him. In the application it was stated that the wife was not

afflicted with any hereditary or chronic disease. The blanks in the application were filled in by the company's representative, and plaintiff told him at the time that his wife had tuberculosis. On these facts the Court of Appeals of Georgia, in a suit on the contract, the case of *Herrin v. Georgia Burial Corporation*, 76 Southeastern Reporter 755, held that, without reference to the question whether the company was, within the meaning of the statutes of that state, an insurance company, or to whether the application was a part of the contract, knowledge by the company's agent of the wife's condition was imputable to the company, and the execution and delivery of the contract, with such knowledge, constituted a waiver of the company's right to rely upon the statement in the application that plaintiff's wife was not affected with any hereditary or chronic disease.

SECTION 98 RIGHT TO RECOVER FUNERAL BENEFIT ASSESSMENTS

The decision of the Pennsylvania Superior Court in the case of *Funeral Benefit Association of the United States v. Colonel Ellsworth Council No. 960, Order of Independent Americans*, 66 Pa Super Ct Rep, 10, is instructive on an interesting point relating to funeral benefits insurance. In affirming judgment in the defendant's favor, the court held that where an unincorporated beneficial association composed of subordinate councils provides, by its by-laws, that if any assessment levied upon a subordinate council remains unpaid for a certain time such council in default shall without further action stand suspended from membership, and there is no other remedy provided by the by-laws, the association, after the suspension of a local council has become effective by the automatic action of the by-law, cannot collect assessments from the council by legal proceedings.

The plaintiff association had maintained an assessment rate of fifteen cents against each member of the subordinate councils to cover losses through the payment of funeral benefits, but raised the rate to twenty cents. Disapproving the increase, defendant, a subordinate council, refused to pay the first two assessments at the new rate and thereby became automatically suspended. Plaintiff sued to recover the amounts covered by the assessments, but lost the suit, the Superior Court declaring.

"As we held, in construing this same by-law in *Funeral Benefit Association v. Hyatt Council*, 62 Pa Superior Court 578, 'The action of the council was voluntary in refusing to pay the assessment, and we are not concerned with the reasons prompting its action. They knew the by-laws governing the association, and that following the refusal to pay the assessment the result would be automatic suspension of the council from membership therein. It did not seek reinstatement, but accepted the order of suspension from membership as conclusive of its future relation. The by-laws of the plaintiff are of their own making, and there is no provision for any individual liability for a pre-existing debt of the members of council after its suspension from the association.' The plaintiff association, having provided a suspension penalty for non-payment by a council of an assessment, and having exhausted it, cannot now invoke another and different one not mentioned in its by-laws."

CHAPTER XIX

ASPECTS OF NOTES AND ACCOUNTS

SECTION 99. MERGING ACCOUNT INTO NOTE

When an open account is past due and the holder accepts a note covering the amount, payable at some future day, he precludes himself from proceeding against the debtor until the note matures. And suit on a note that has not matured must fail, although it becomes due during pendency of the suit (Connecticut Supreme Court of Errors, *Walter H Goodrich & Co. v. Friedman*, 102 Atlantic Reporter, 607.)

SECTION 100. BANKRUPTCY AS BAR TO BILL

A married woman died, and after burial the man files a petition in bankruptcy. What chance has the funeral director of collecting his pay?

If the husband schedules this bill as one of his liabilities this, it seems, will discharge his liability on it, excepting as the assets of the estate in bankruptcy may be sufficient to pay the bill wholly or in part. However, if the wife left an estate of her own the undertaker might file claim against it.

A section of the Bankruptcy Act provides "A discharge in bankruptcy shall release a bankrupt from all of his provable debts, except such as (1) are due as a tax levied by the United States, the State, county, district, or municipality in which he resides; (2) are liabilities for obtaining property by false pretenses or false representations, or for willful or malicious injuries to the person or property of another, or for alimony due or to become due, or for maintenance or support of wife or child, or for seduction of an unmarried female, or for criminal conversation; (3) have not been duly scheduled in time for proof and allowance, with the name of the creditor if known to the bankrupt, unless such creditor had notice or actual knowledge of the proceedings in bankruptcy; or (4) were created by his fraud, embezzlement, misappropriation, or defalcation while acting as an officer or in any fiduciary capacity."

It will be seen that this provision is not broad enough to specifically exempt an undertaker's claim from the general effect to be given a discharge in bankruptcy.

SECTION 101. ASSIGNMENT OF INSURANCE RIGHTS

From what the courts of several states have decided, the following general rules of law may be laid down:

Rights under a life policy may be assigned. If the insurance be payable to the insured person's estate, he may make a valid assignment of the policy. If another is named as beneficiary, an assignment may be made jointly by the insured and the beneficiary. After the insured's death, the beneficiary may validly assign the right to receive the proceeds.

As a general rule, any writing indicating an intention to pass an interest in the proceeds of a policy is sufficient as an assignment.

The policy should be delivered to the assignee, ordinarily. But an assignment may be sustained where intention to pass title to the insurance proceeds is clear, although the policy may remain with the beneficiary.

An insurance company may by provisions in its policies and contracts fix such conditions as it sees fit with respect to the assignment of rights under a policy. An assignee takes subject to these rules, of which he is presumed to know. So, where the conditions of a policy require the company's consent, or notice to the company, concerning a transfer of rights, these conditions must be complied with.

When an undertaker takes an assignment under a life insurance policy, he should be sure to read all its conditions relating to assignments, and give the company proper notice in writing of the rights required by him. Then, if the company pays the insurance proceeds to the original beneficiary or any other person, the undertaker will be entitled to hold the company liable as for knowingly disregarding his rights.

CHAPTER XX

FUNERAL DIRECTOR OR EMBALMER'S LIABILITY FOR NEGLIGENCE AND OTHER WRONGS

NOTE—See, also, the chapter on Autopsies and Mutilation of Bodies

SECTION 102 DUTIES IN GENERAL

So far as there is an express contract as to how a body is to be prepared for shipment, etc., that agreement, of course, is controlling as between the parties. But when there is no such contract, and the body is entrusted to the funeral director for embalming, placing in the casket, shipment, etc., as is usually the case, the law implies a promise on the part of the undertaker that he will do the work in a reasonably careful and skillful manner. What constitutes reasonable care and skill is to be determined by the facts of the particular case, in the light of the skill and care usually used by funeral directors in similar circumstances. The law respects the fact that a funeral director in a town of a few hundred inhabitants, conducting few burials, is not to be expected to use the high degree of skill which a more experienced funeral director in a large city possesses. But when it appears that a body has been carelessly or unskillfully handled, after considering what an ordinary careful and skillful funeral director would have done in the same circumstances, there is legal liability in damages.

SECTION 103. NEGLIGENCE IN EMBALMING

That an embalmer is not liable for mental suffering of a deceased person's widow, resulting from the body becoming badly decomposed during transportation, as a result of any negligence of the embalmer in failing to properly prepare the remains, was decided by the Colorado Court of Appeals, in the case of *Hall v. Jackson*, 134 Pacific Reporter 151, it appearing that the negligence was not wanton or willful. From the facts, as stated by the Colorado court, it appears that deceased died in that state June 28, 1909, and, after being delivered to the embalmer there for embalming, the body was shipped to Pennsylvania. In its arrival at the destination it was so badly decomposed that it became necessary to leave it outdoors while the funeral service was held in a nearby house, and the remains could not be viewed. Claiming that this resulted from the embalmer's failure to properly prepare the remains, the widow brought suit for \$10,000 damages for claimed injury to her feelings, and recovered judgment for \$1,000 in the trial court, but the Court of Appeals set the judgment aside, stating that she was not entitled to recover more than nominal damages. It is to be noted that the claim was not for damages for breach of contract, but was restricted to a claim of mental anguish, which the Colorado Court of Appeals holds is not subject to compensation under such circumstances, when it appears that there was no willful negligence on the embalmer's part. This appears to be a just decision, since it is difficult to understand how true grief on account of the condition of a relative's remains can be assuaged in any degree by the recovery of money from one who is not shown to have wantonly produced that condition, unless a commercial value is to be assigned to the finer sensibilities.

SECTION 104. LIABILITY FOR CONFUSING BODIES

A confusion of bodies in the vault of Indianapolis funeral directors several years ago resulted in an interesting suit, in which the firm was held liable for consequent grief of surviving parents. (*Remihan v. Wright*, 25 Northeastern Reporter, 822.) It seems that the remains of plaintiff's daughter were left with defendant firm for safe-keeping until interment should be desired at the end of the winter. When interment was called for, it was found that the body had been shipped to a Pennsylvania town and there buried under mistaken belief that it was the remains of another person, whose body, with others, was, also, in defendants' charge. Defendant procured return of the body, which was re-interred at Indianapolis, as was originally

intended, but the parents brought suit and recovered judgment over the firm's contention that plaintiffs had sustained no damage measurable at law. The undertakers claimed that plaintiffs' acceptance of the body on its return from Pennsylvania amounted to a release of any claim on account of the negligent, though innocent mistake; and that such grief as plaintiffs suffered could not be compensated in dollars and cents, but both claims were ruled against defendants. Thus was plaintiffs' grief assuaged and the undertakers' inadvertence punished.

SECTION 105. UNLAWFUL DISPOSAL OF BODIES

The Tennessee Supreme Court has recognized the principle that it is a punishable offense for a funeral director or another in charge of a body for the purpose of burial to sell it for dissection purposes, or to attempt to dispose of it for that purpose. The court also holds that one who acts as agent for another in such an unlawful transaction is guilty, the same as if he were the principal offender. In other words, a funeral director's employee may be punished for participating in a wrongful disposition of a corpse (State v. Thompson, 58 Southwestern Reporter, 218.) In this case the Supreme Court affirmed a conviction of a funeral director for conspiring to sell a body entrusted to him for burial, saying:

"Civilized countries have always recognized and protected as sacred the right to Christian burial, and to an undisturbed repose of the human body when buried. The willful, unlawful and indecent taking and carrying away of the dead body of an unknown person, with the intent to sell and dispose of the same for gain and profit, to the scandal and disgrace of religion, and in contempt of the laws and customs of the realm, was held to be an indictable offense" in an English case.

The court cites the following statement of an eminent law writer: "Moreover, as tending to corrupt the public morals, and as disturbing the sensibilities of the people, are such acts as casting the dead body of a human being into a river without the rites of Christian sepulture; the stealing of a corpse; the digging of it up, where buried, or conveying of it away from the burial ground for sale or for dissection; and the selling, for dissection, of the dead body of a person capitally convicted and executed, when the sentence did not direct such disposition of it. These are all indictable offenses at the common law."

SECTION 106. PHOTOGRAPHING DEAD BODIES

If an undertaker having charge of a body were to permit a photographer to make a photograph of it, without consent of the next of kin of the decedent, could these relatives enforce a claim for damages against the undertaker?

I believe that this question must be answered in the affirmative, although, so far as I am able to ascertain, the precise point has not been presented to an appellate court. It would seem that this would be a plain case of a violation of the right of decedent's surviving relatives. The funeral director's custody of remains is limited to the purpose of preparing it for burial and interring it as arranged for. He should permit no interference with it, except as sanctioned by those entitled to control its burial, excepting of course such proceedings as may be sanctioned by the law, such as a coroner's inquest.

An interesting court decision throwing light on this subject was decided by the Kentucky Court of Appeals in the case of Stokes and wife v. Douglas, 149 Southwestern Reporter, 849.

Twin boys were born to plaintiffs, possessing the physical peculiarity that they were joined together from their shoulders down to the end of their bodies. They had one set of bowels, breast bone or sternum, but were otherwise twins, and not one baby. When they were a year or so old they died, and plaintiffs employed defendant, a photographer, to take a picture of the nude remains, it being agreed that twelve copies only should be made of the photograph. But defendant made extra copies, which he had covered by copyright.

Plaintiffs brought suit to recover damages, and a jury returned a verdict in the sum of two thousand dollars. Sustaining this award, the Court of Appeals said:

"The corpse of the children was in the custody of the parents. The photographer had no authority to make the photographs except by their authority, and when he exceeded his authority he invaded their right. We do not see that this case can be distinguished from those involving the like use of the photograph of a living person and this has been held to be actionable.

"The most tender affections of the human heart cluster about the body of one's dead child. A man may recover for any injury or indignity done the body and it

would be a reproach to the law if physical injuries might be recovered for and not those incorporeal injuries which would cause much greater suffering and humiliation.

"If the defendant had wrongfully taken possession of the nude body of the plaintiff's dead children and exposed it to public view in an effort to make money out of it, it would not be doubted that an injury had been done them to recover for which an action might be maintained. When he wrongfully used the photograph of it a like wrong was done, the injury differing from that supposed, in degree but not in kind."

SECTION 107. NEGLIGENCE OF FUNERAL VEHICLE DRIVERS

The funeral director's liability for accidents ordinarily depends upon the injury having occurred either through his own personal negligence or that of some one standing in the relation of employee to him. So, if he procures automobiles from some third person and furnishes his own drivers he is liable for any injuries resulting to third persons as a direct and natural consequence of negligent driving on the part of such drivers. But, ordinarily, where the funeral director does not stand in the relation of employer of the driver, but merely as hirer of the vehicle and the services of the owner's driver, the funeral director is not liable for negligence of the owner or driver of the vehicle.

A leading case on this subject was decided by the Colorado Supreme Court—*Frerker v Nicholson*, 41 Colorado Reports, 730. Defendant, a liveryman, was held to be liable for injuries caused by negligence of his driver, who was sent to drive a carriage to a funeral and back at the instance of a Denver undertaking company. The court says.

"In the case at bar the negligence relied upon was that of the driver, the servant of defendant. The undertaking company hired of the defendant a carriage, horses, and driver, and exercised no control whatever over the driver, further than to tell him a general way to drive to the cemetery and return the occupants of the carriage to their homes. The defendant, and not the hirer, exercised sole control over the driver in the mode and manner in which the latter performed the service. The defendant and not the hirer, employed the driver, and defendant was the only one who had power to discharge him or direct his movements. In such circumstances it is unquestionably the law that the owner, and not the hirer, is liable in damages for injuries which result to the occupant of a carriage as the result of the driver's negligence.

"To this proposition a number of cases might be cited. . . . In *Little v. Hackett*, 116 U. S. 366, 6 S. Ct. 391, . . . in a luminous opinion by Mr. Justice Field, it was held, quoting from the syllabus: 'A person who hires a public hack and gives the driver directions as to the place to which he wishes to be conveyed, but exercises no other control over the conduct of the driver, is not responsible for his acts or negligence.'"

The last cited case was decided by the United States Supreme Court.

The case of *Nicholson v. E. P. McGovern Undertaking Co.*, 41 Colorado Reports, 1, was a companion case to the other Colorado case above mentioned, being the suit against the funeral director. It discloses that the facts were as follows: Plaintiff was a friend of one whose funeral was conducted on the day in question. She rode to the cemetery and back in a carriage hired by the undertaking company from Frerker, the liveryman. As she was about to alight from the carriage in front of her home, the driver suddenly started the horses, which threw plaintiff to the ground and caused the injuries for which damages were sought.

Trial of the suit resulted in dismissal of the action, the trial judge holding that there was no liability on the part of the undertaking company. It was afterwards that plaintiff sued the liveryman, recovering judgment against him, as above noted. Nevertheless, plaintiff appealed to the Supreme Court from the judgment dismissing her suit against the undertaking company. However, the appeal was not pressed by plaintiff against the undertaking company. Referring to plaintiff's counsel, the Supreme Court says:

"In his brief here, he . . . says that he has arrived at the conclusion that the trial court was right in dismissing the present action against the hirer. Whether this conclusion is in anywise due to the fact that plaintiff was successful in receiving judgment against the owner, or is the result entirely of a further examination of the authorities, is immaterial. It is sufficient for us to say that, since the plaintiff in error and defendant in error are in accord, the decision of the trial court was right, it would not be fitting to disturb this unusual concord by reversing a judgment with which the parties themselves are satisfied."

Even as to a funeral director's own vehicles, used at funerals conducted by him

and hired to other funeral directors on occasion, he is not under the strict liability of a common carrier of passengers, being merely bound, as a private carrier or hirer of the vehicles to others, to use a reasonable degree of care to avoid injuries to third persons. This point was decided by the Illinois Supreme Court in the case of *F. W. Hochspier, Inc., v. Industrial Board of Illinois*, 116 *Northeastern Reporter*, 121. It was held in that case that the provisions of the Illinois Workmen's Compensation Act, which entitle the employees of one engaged in the occupation of carrying passengers by land to an award to cover injuries sustained in the course of their employment, regardless of any question of negligence, cannot be applied in a case where the chauffeur of a limousine, hired by one funeral director to another to carry passengers to a funeral was injured. The court said

"The purpose for which plaintiff in error kept cars and employed drivers was to enable it to carry on its business of undertaking and conducting funerals. The use of cars and vehicles to carry passengers was an incident to that business, and the chauffeur, while engaged in driving cars to funerals and burials conducted by plaintiff in error, was not engaged in any of the hazardous occupations enumerated in the statute. Carrying passengers on such occasions did not constitute plaintiff in error a carrier by land, within the meaning of the statute.

"Cars were not kept by plaintiff in error for the purpose of hiring them to carry person to funerals, but were only occasionally hired to other undertakers for that purpose. How often they were let to other undertakers does not appear, but the proof is that it was a custom among undertakers that, when one had need of extra cars for a burial, he would hire from other undertakers the number needed. We do not think that such use of plaintiff in error's cars brings it within the provisions of the statute as to carrier by land and subjects it to the liability under the Workmen's Compensation Act, when it would not have been liable under said act if Neumann (the injured man) had been driving the car to a burial conducted by plaintiff in error."

As late as June 22, 1923, the question as to whether the driver of a vehicle hired by a funeral director from a liveryman is an employe of the latter in such sense as to make the latter liable for injury negligently caused by the driver, was passed upon by the Appellate Division of the New York Supreme Court. The decision was handed down in the case of *Wissner v. Hartmann*, 200 *New York Supplement* 408. The accident consisted in sudden starting of horses while plaintiff, a funeral passenger, was re-entering the vehicle.

Funeral Director Baque engaged the coach and driver, together with others for the funeral, the vehicle being owned by defendant, who was also the general employer of the driver. Defendant alone had power to discharge the drivers, and he paid them their wages.

After the interment the coach in question was driven to a restaurant not far from the cemetery for refreshments at the direction of the funeral director, who acted for the widow of the decedent. It was while plaintiff was re-entering the coach at the restaurant that the accident happened.

At the end of plaintiff's evidence, the trial judge dismissed the suit for reasons stated in the following paragraph.

"The evidence shows here that this defendant, who was a livery-stable keeper, hired his coaches to Baque, who is an undertaker, under an agreement by which Baque was to pay a consideration to the defendant; the defendant directed his coaches to report to Baque's undertaking establishment; the defendant did not know the name of the persons who were to be served; in fact, he did not know, and it was little of his concern, from what house the body was to be taken to the cemetery, or what passengers rode in his coach; so that after the coaches arrived at Baque's place of business they were under the complete control of Baque, in that he directed the course where they were to go. It is true he had no power to discharge the drivers, but he did have sole control in the sense of directing them where they must go. After arriving at the cemetery, the driver of the carriage which injured this woman was, with others, directed to go to a place for refreshments, that place being out of the direction of their home—that is, the livery stable of this defendant, so that when these drivers went to that place they not only digressed but they really abandoned—had they been in the employ for the time being of this defendant—they abandoned his service; so that upon two theories here it seems to me the plaintiff has not made out a case: First, that the man for the time being was not in the employ of Hartmann, but was in the employ of Baque, second, if it be held that he was in the employ of Hartmann, there was an abandonment of the work amounting to more than a digression. He abandoned his idea of going home for the time being, which was his duty, and went to a restaurant. So I will have to dismiss this complaint."

But Presiding Justice Kelly, speaking for the Appellate Division of the Supreme Court on an appeal taken by plaintiff, said, in the course of an opinion which granted a new trial:

"I am forced to disagree with the learned trial judge on both propositions. I think the driver of the coach was in the employment of the defendant at the time of the accident, and I think it was error to decide as matter of law that the visit to the restaurant was an abandonment of the contract between Hartmann and the undertaker.

"Upon the first point, it seems to me, the case is within the principle of *Schmedes v Deffaa*, 214 N. Y. 675, 108 N. E. 1107, where the Court of Appeals reversed this court, in the First Department, upon the dissenting opinion of Miller, J., concurred in by Laughlin, J., 153 App Div 819, 138 N. Y. Supp 931. The *Schmedes* case has been frequently cited. The facts were similar to the case at bar, except that the undertaker in that case ordered the coaches from Deffaa, the defendant. Deffaa did not have sufficient coaches to fill the order, and thereupon hired them from another liveryman. He sent his own coaches and drivers, together with those hired from the second liveryman to the undertaker. The undertaker gave the necessary directions to all of the coach drivers. The plaintiff was injured through the negligence of one of the drivers hired from the second liveryman. The Appellate Division, by a divided court, affirmed a dismissal of the complaint upon the ground that Deffaa, the defendant, was not liable, as he 'acted merely as a middleman in the transaction, and who was neither the master of the driver nor the one who directed his movements after he reported to the undertaker'.

"Justices Miller and Laughlin dissented, and the Court of Appeals reversed the nonsuit upon Judge Miller's opinion, in which he said.

"I agree with Mr Justice Scott that the driver, whose negligence caused the accident in this case, was not the servant of the undertaker. The hiring by the undertaker was precisely like that of the ordinary hiring of a livery turnout. . . . If, then, instead of being borrowed for the occasion, the driver had been one of the defendant's regular employees, there would be no doubt of the latter's liability. . . . As, between the undertaker and the defendant, the latter was an independent contractor, and the driver, though subject to the former's instructions as to where he should go, was doing the latter's work, and was for the time being under his control, precisely as though in his general employment. As between the general employer and the defendant, the driver was merely loaned by the former to the latter. . . . The driver was certainly not doing the work of his general employer, because the latter had not engaged to do that work. He was not doing the work of the undertaker, because the latter had employed the defendant as an independent contractor to do it. The work, then, was that of the defendant, done by the agencies supplied by him and subject to his control, except in so far as the undertaker might direct the course of the journey'.

"So in the case at bar, I think the coach driver was engaged in the service of the defendant, his general employer at the time of the accident.

"Nor can it be said as matter of law that the visit of the party to the restaurant for refreshment after the burial of the dead was an abandonment of the employment of the defendant's coach and driver. Certainly there was nothing unusual or extraordinary in the occurrence. . . . I think it was at least a question of fact upon this evidence whether the coach driver was beyond the 'ambit of his duty,' or whether he had abandoned his duty in taking the mourners to the hotel."

In the case of *Hershberger v Lynch*, 9 *Sadler's Reports*, 91, 11 *Atlantic Reporter*, 642, the Pennsylvania Supreme Court decided that a trial judge properly instructed a jury that a livery stable keeper would not be responsible for the negligence of the driver of a carriage furnished with a team, to an undertaker for use at a funeral, if the defendant had completely surrendered to the undertaker control of the driver so that the defendant livery stable keeper could not exercise any control whatever over him; but that, on the other hand, the defendant would be responsible if the engagement of the vehicle and driver simply gave the undertaker the right to direct where the vehicle was to be driven.

One of the latest decisions on this subject is that handed down by the Kansas City Court of Appeals in the case of *Burke v Shaw Transfer Co.*, 243 *Southwestern Reporter*, 449, decided June 26, 1922. There the court decided that the evidence showed that a negligent automobile driver was not an employee of an undertaker in such sense as to make the undertaker liable for his negligence. It was ruled that the owner of the vehicle was liable. That was a case involving injury to a funeral passenger while returning from the cemetery.

The Wagoner Undertaking Co., St. Louis, Mo., won a suit for damages brought

against it by a young woman named Wynne, who was struck by the company's automobile directly in front of which she is found to have negligently stepped in a St. Louis street. (204 Southwestern Reporter, 15)

The day of the accident was stormy, heavy snow falling, and plaintiff had only taken a step or two from the curb when she collided with the automobile which was not moving faster than eight miles an hour.

Her suit for damages was tried on the theory that it was governed by what is known in the law as the "humanitarian doctrine," a legal principle which is to the effect that the fact that an injured person was guilty of contributory negligence will not relieve the party causing the injury from liability, if it can be shown that, notwithstanding such contributory negligence, there would have been no injury had the latter used due care to avoid an accident after discovering its imminence. This claim was based on the fact that the driver of the automobile saw plaintiff just before the collision, but in affirming judgment in favor of the undertaking company the Missouri Supreme Court said:

"The driver saw her, but too late to avoid striking her, by the exercise of ordinary care. He and the witness, who was in the machine with him, state that it would have been impossible to change the course of the machine, after they saw the plaintiff, sufficiently to avoid striking her, this on account of her stepping into the street almost immediately in front of the machine. This proof is not sufficient, therefore, to sustain a right of recovery under the 'humanitarian doctrine,' the governing principle of which is the failure of the alleged wrongdoer to exercise ordinary care to avoid injury when the peril of the injured party has been discovered, or which, by the exercise of ordinary care, might have been discovered."

SECTION 108 UNINVITED FUNERAL GUESTS

A common-place legal principle was applied by the Kentucky Court of Appeals to a somewhat uncommon funeral accident, in the case of *Laxton v Wisconsin Steel Co*, 201 Southwestern Reporter, 15

The defendant, in connection with its coal mining operations, owns engines and railway flat cars used exclusively for its own freight business purposes. Two of the company's employees were killed in a mine accident, and, for the accommodation of the families of the deceased men and their friends, an engine and freight car were run to the cemetery about one mile away. The company had temporary seats placed on the car, which was made to perform the offices of hearse and vehicle for the carriage of the mourners. No charge was made for this accommodation.

Plaintiff, who lived near the cemetery and desired to go to the town from which the funeral party had come on the car, arrived at the cemetery about the same time as the funeral party, and without invitation, as the court finds, followed the deceased men's relatives and friends back to the car after the interment had taken place and took a place thereon where she rode back to town. On arrival of the car, a representative of the company placed a strong plank 14 feet long and one foot wide from the ground to the top of the car and stood by to assist the women of the party to alight. He assisted plaintiff along the plank to within about two feet of ground where he let go her arm and hand that he might assist those following her down the plank. In some way plaintiff slipped and fell to the ground, breaking her arm.

Claiming that she stood in the legal relation of passenger to the defendant company, plaintiff sued for damages on the ground that defendant had failed to exercise that high degree of care for safety in alighting that the law imposes upon common carriers of passengers.

"But clearly under the facts," said the Court of Appeals, "the defendant was not a common carrier of passengers, and did not owe to the plaintiff the high degree of care sought to be imposed on it, or any care, except ordinary care not to actively injure the plaintiff. The defendant was under no duty to assist the plaintiff to either get on or off the car, and in so doing was merely showing her an ordinary courtesy such as was extended to the other women and children on the car. Towns, who was in charge of the car, was not guilty of positive negligence in letting go the hand and arm of the plaintiff at the time and place that he did, because, as we have said, he owed her no duty of assistance. There can be no actionable negligence unless there is a breach of duty, and the master cannot be held responsible for the courtesies of his servant when the master is under no duty to extend the courtesies and the servant merely renders them as a favor or accommodation. . . . At the most the plaintiff was a mere invitee or licensee, and it is well settled that a person occupying this status, who is injured while on the premises of another, cannot maintain an action against the owner of the premises, unless he has been guilty of some intentional or positive act of negligence that causes the injury complained of. . . . If the defendant in this case could be held liable, so could any private person, who furnished a wagon, team, and driver, for accommodation to carry

people he was under no duty to carry, be made liable if the driver of the wagon, in helping one of them on or off, should by accident or inattention let him fall. And, of course, there could be no liability on the owner in such a state of case."

This case raises an interesting question as to the extent of a funeral director's liability for injuries to members of funeral parties under his charge. As to persons who "butt into" funeral parties without any special or general invitation, there can be no question but that the responsibility is tested by the same rule laid down in the Kentucky case. That is, there is no liability unless there has been intentional or positive negligence naturally tending to produce injury.

On the other hand, there can be no doubt but that a somewhat higher degree of care must be exercised toward those persons who are invited to ride in carriages under the funeral director's control. When he or his assistants stand by to aid members of a funeral party to enter or alight from vehicles all care that is reasonably to be expected from an ordinarily prudent person under the same circumstances should be used.

And it would seem that where a general invitation is extended to all present at a funeral service to enter vehicles standing ready to convey friends and relatives to the cemetery and return, any person accepting the invitation in good faith is entitled to the exercise of the same degree of care in his or her behalf as should be shown the members of the decedent's family.

The funeral director should also exercise a reasonable degree of care to satisfy himself as to the reasonable safety of the vehicles and horses, if any, drawing them, especially where he undertakes to furnish them, whether they be his property or be owned by some livery stable keeper from whom he has engaged them. Vicious horses should not be used, nor plainly defective carriages, etc., for his contract to furnish means of conveying the funeral party to the cemetery implies an obligation on his part to use due care to see that these means are safe. But this does not mean that he is an insurer against all accidents. If he has done all that the ordinarily prudent man would have done under the same circumstances he is not liable for resulting accidents.

SECTION 109. INJURY TO CUSTOMER

In Wake County Superior Court, at Raleigh, N. C., a jury found a verdict in favor of the defendant in the case of *Newton v. E. A. Strickland Undertaking Company* in which \$10,000 damages was demanded for the death of George Newton through the falling of a wall case of caskets on him in such a way as to inflict fatal injuries. The successful defense was that Newton, who was selecting a casket for his dead wife, became beside himself with grief and leaped into a casket as it sat in the wall case and pulled the whole equipment over,

CHAPTER XXI

LIABILITY CONCERNING TELEGRAMS

SECTION 110 IN GENERAL

"We sent a telegram advising a man that his sister had passed away, and also as to when the funeral would take place, but up to this time the man has never received the message," wrote a Wisconsin subscriber to Embalmers' Monthly. "He did not attend the funeral and did not know of his sister's death until advised by letter. We sent the telegram charges paid and have a copy of it.

"The people who trusted us to send the message now look to us as being negligent in the discharge of our duties, and we wish to ask you what can be done with the telegraph company, which has been negligent in delivering the message."

The following opinion was given:

"In the first place, it is altogether unlikely that there are any circumstances in the case which render the funeral directors liable to their customer. Certainly, there can be no liability unless the funeral directors negligently failed to carry out what they undertook in the matter of notifying the decedent's brother. Unquestionably, a funeral director who undertakes to see that death messages are transmitted is under legal obligation to use due care in the premises. But if he delivers to the telegraph company messages desired to be sent, with addresses stated as given to him, his obligation is at an end. His assumption of the task, whether as a friendly gratuity or as part of services for which he makes a charge, does not make him a guarantor that the telegraph company will handle the messages with due diligence.

"But even if a funeral director contracts for compensation to look after the matter of sending out death messages, and even if he should be guilty of carelessness in failing to send them properly, it seems to be quite clear that his liability would in the ordinary case be nominal. He would be liable for any money loss directly sustained by his customer in consequence of the neglect, so far as naturally caused by such neglect. For example, the customer would be entitled to be reimbursed against any money advanced as tolls on the messages. But the undertaker would not be liable for mental anguish suffered by the surviving relatives on account of nondelivery of a message, according to the rule generally laid down by the courts. It has been established by decisions of the federal courts that mental anguish is not a proper basis of recovery of damages for negligent handling of interstate telegrams. And under the decisions of the Supreme Court of Wisconsin the same rule seems to apply to intrastate messages, excepting as liability is expressly fixed against telegraph companies under the following quoted statute in force in Wisconsin:

"Any person, association or corporation operating or owning any telegraph line, doing business in the state of Wisconsin, shall also be liable for all damages for mental anguish resulting directly and proximately from or occasioned by the failure or negligence of their operators, servants or employees in receiving, copying, transmitting or delivering dispatches or messages, not to exceed in amount the sum of five hundred dollars."

"Therefore, in the case submitted by the gentleman from Wisconsin, it appears that if the telegram sent to the decedent's brother was sent to a point in Wisconsin, the person who caused the message to be sent could recover against the telegraph company for mental anguish suffered because of being deprived of the consolation which would have been afforded through the presence of the brother, provided that it clearly appears that the brother would have attended had he received the message in time. Or the brother could recover for mental anguish suffered through being deprived of opportunity for attending his sister's funeral. But the aggregate liability of the telegraph company could not exceed \$500.

"If the message was an interstate one there would be no right to recover damages for mental anguish.

"The general state of the law on the subject of liability of telegraph companies in

cases of this kind as to *intrastate* messages will be better understood on reading the following statements contained in a standard legal work (37 Cyc 1775-1793):

"At common law there can as a rule be no recovery of compensatory damages for mental suffering unaccompanied by physical injury, unless resulting from the wilful or malicious wrong of defendant, and in opposition to a doctrine now recognized in some jurisdictions, it has been vigorously maintained that there is no sufficient reason or justification for making an exception to the common-law rule in the case of actions against telegraph companies. It is accordingly held in most jurisdictions that in such cases there can be no recovery for mental anguish, although by reason of the company's negligence or default in regard to the transmission or delivery of a message plaintiff is prevented from seeing a near relative before death or from being present at the funeral (Dakota, Florida, Georgia, Illinois, Indiana, Kansas, Minnesota, Mississippi, Missouri, New York, Ohio, Oklahoma, Pennsylvania, Virginia, West Virginia.) Even in these jurisdictions, however, there may be a recovery for mental anguish due to wilful acts of an insulting character.

"The doctrine that, in the case of messages relating to sickness or death, if the negligence of the telegraph company prevents plaintiff from being present at the bedside of a near relative before death, or from attending the funeral, the telegraph company is liable in compensatory damages for the mental suffering so caused, was first promulgated by the Supreme Court of Texas in 1881, there being no authority for it, prior to that time, except a tentative suggestion advanced by a text-writer to the effect that in the writer's opinion it should be the law. In spite of some subsequent judicial vacillation, the doctrine has now become firmly established in the state of its origin, and has been adopted and followed by the courts of several other states (Alabama, Iowa, Kentucky, Nevada, North Carolina, Tennessee), and in a few jurisdictions has been expressly recognized by statute (Arkansas, South Carolina, Wisconsin and probably other states). Such a right of recovery is also recognized under the civil law in Louisiana. On the other hand, in at least one jurisdiction (Indiana), where the mental anguish doctrine was formerly recognized, it has been expressly repudiated by the courts."

"The rule that plaintiff can recover only such special damages as may be said to have been within the contemplation of the parties applies to damages for mental anguish as well as for actual pecuniary loss, so that there can be no recovery on this ground unless the telegraph company had notice from the language of the message or otherwise that by reason of its negligence or default such damages would be likely to result; and this rule applies not only to the existence of any mental anguish, but also to the particular elements or grounds for such suffering in the particular case, and not only to the general character of the message, but also to plaintiff's connection therewith."

A decision of the Mississippi Supreme Court shows that it is the law in that state that, while there can be no recovery against a telegraph company for mental anguish arising from mere negligence in failing to promptly deliver a death message, there is a right to recover where the negligence is so gross as to amount to willfulness. The decision was handed down in the case of *Teague v. Western Union Telegraph Co.*, 77 Southern Reporter, 302, in which plaintiff sued for tardy delivery of a message announcing the death of her son while an inmate in the Tennessee penitentiary, thereby depriving her of opportunity to arrange for the shipment and burial of the body, and, inferentially, resulting in the warden of the penitentiary turning the body over to the anatomical board, with the privilege of dissection. The Mississippi Supreme Court said, citing other court decisions:

"For breach of an undertaker's contract to keep safely the body of plaintiff's deceased child, it was held that damages could be recovered for mental anguish. So, too, where there was a breach of contract to bury a child in a proper manner, damages for mental anguish were allowed. Damages for mental anguish have also been allowed for breach of contract to transport a corpse."

"The kind of mental suffering here sued for is not something visionary, or the product of too sensitive a mind. The right of the appellee to take possession of the dead body of her family, to have a funeral service according to the highest expressions of a Christian civilization, and to control the place of interment are sacred rights. Society, and indeed the government, is founded upon the home, and the ties that bind members of the family circle one to the other are indeed blessed. The plaintiffs, then, were within the law in attempting to have the body of Teague shipped and interred, and the natural consequence of appellant's gross negligence in this case produced the kind of suffering which any family would experience whose circle is broken by death. In the *Ruggles* report, frequently quoted with approval, it is said:

"The establishment of a right so sacred and precious ought not to need any judicial precedent. Our courts of justice should place it, at once, where it should fundamentally rest forever, on the deepest and most unerring instincts of human nature, and hold it to

be a self-evident right of humanity, entitled to legal protection, by every consideration of feeling, decency, and Christian duty."

In the case of *Connelly v. Western Union Telegraph Co*, 100 Virginia Reports, 51, plaintiff was denied the right to recover damages on account of mental anguish suffered in consequence of defendant's non-delivery of a death message, relating to plaintiff's father, resulting in plaintiff being unable to attend the funeral. The decision was based on a holding that "damages such as are recoverable at law must not only be the proximate result of the act complained of, but must also be capable of definite ascertainment, or, to use the language of law writers and the decided cases, must be certain, definite, and not speculative in character. Under this rule, damages for mental suffering alone, as an independent cause of action, were never allowed at common law. . . . In the case of a physical injury, damages for pain suffered, bodily or mentally, are allowed, for the reason that such mental suffering is necessarily a part of the physical injury, and inseparable therefrom."

In this case the court also used the following language which would squarely apply to a claim for damages for mental anguish, caused by mere negligence in delaying transportation of a body, as well as for delaying delivery of a death message:

"There is no open or practicable means by which the damage occasioned by a negligent act that causes only mental anguish can be assessed"

It is to be noted that this subject is now being discussed on an assumption that the negligence relied upon was not gross or wanton, and that mental anguish is the only ground of recovery asserted. The closing paragraph of the decision in the Virginia case expressly recognizes the right to recover damages for "other wrongs, inconveniences and damages, to which . . . damages for his injured and insulted feelings might well be added."

It seems, however, from a decision handed down by the Supreme Court of Arkansas in the case of *Sharp v. Western Union Telegraph Company*, 180 Southwestern Reporter, 504, that this rule is limited to instances in which the message is sent between points in the same state, and not to interstate messages, the latter class of telegrams being under Federal and not state regulation. But, bearing upon the amount recoverable in the case of a negligent delay in transmitting a death message, the court holds that \$375 is not excessive recovery for anguish suffered by a daughter in being prevented from attending her father's funeral.

A surviving husband was declared by the Texas Court of Civil Appeals, in the case of *McFarlane v. Western Union Telegraph Company*, 161 Southwestern Reporter 57, to be entitled to recover against the company on account of mental anguish suffered by him in consequence of being prevented, by reason of negligent transmission of a telegram under which he attempted to secure funds to cover her funeral expenses, from having his wife's body embalmed. Plaintiff wired to a debtor at Fort Worth, requesting him to wire money immediately, stating that his wife had just died. The telegram was sent from Galveston, but an operator, in transmitting it, negligently changed the message so that it showed that plaintiff was in Dallas. On this account plaintiff failed to receive the money and was compelled to bury his wife in a cheap coffin and in an unsatisfactory burial lot, without embalming. He sued for damages sustained by him through mental suffering and recovered judgment for \$1,500, which is held by the Court of Civil Appeals not to have been excessive, although the telegraph company had no further notice as to the purpose for which he desired the money wired for than that contained in the mere statement in the telegraph that plaintiff's wife had died and that he desired the addressee to send money.

SECTION III. NOTICE TO COMPANY OF NATURE OF MESSAGE

In the case of *Bagby v. Western Union Telegraph Co*, 174 Southwestern Reporter 738, it was decided by the Kentucky Court of Appeals that a telegram reading "Come at once" was insufficient to show on its face that it related to the death of anyone, and, therefore, delay in delivery of the message did not subject the telegraph company to liability so far as concerns damages for mental anguish suffered by the addressee in being prevented from arriving at his brother's bedside before the latter died.

SECTION II2. DELAY AS CAUSE OF DAMAGE

In the case of *Mobley v. Western Union Telegraph Co*, 206 Southwestern Reporter, 833, it was decided by the Texas Court of Civil Appeals that defendant was not liable in damages to the plaintiff, addressee of a telegram notifying him of the death of his sister, for negligently delaying the message, on the ground that plaintiff was prevented from attending the funeral, where there was no evidence to show that the sender of the message would have delayed the funeral until plaintiff could have arrived.

Even if a brother-in-law was closely enough related to one who had died to be

entitled to recover damages in a proper case for negligent delay in delivering a telegram announcing the death, whereby he was prevented from attending the funeral, there can be no recovery by any bereaved relative on the theory of being prevented from attending the funeral where it appears, as in this case, that after receiving the message there was ample time to reach the place of burial, although plaintiff assumed that the funeral would be held earlier than it was held (Kentucky Court of Appeals, *Holsomback v. Western Union Telegraph Company*, 178 Southwestern Reporter, 1040)

Plaintiff was advised by telegraph of his son's death and immediately delivered a message to the telegraph company for transmission, stating that he would leave the next morning for the place of the funeral. Delivery of the telegram was negligently delayed, resulting in the persons in charge of the funeral arrangements assuming that plaintiff would not attend, and the time for the interment was changed to an earlier hour, whereby plaintiff was prevented from attending the funeral. In affirming judgment against the company in plaintiff's favor, the Alabama Court of Appeals held that the company had no right to assume that there would be no change in the hour set for the funeral, and that the company was bound to transmit and deliver the message as speedily as practicable (*Royal v. Western Union Telegraph Company*, 74 Southern Reporter, 94.)

It was also decided that the fact that the company had established delivery limits at the place to which the telegram was addressed and that the sendee lived outside those limits did not absolve the company from liability for delayed delivery, where the company customarily made deliveries outside the limits when the addresses of the sendees were known.

The Iowa Supreme Court has had occasion to lay down some interesting rules as to the liability of a telegraph company for delaying delivery of a death message when the telegram is addressed to a relative to the deceased and is intended to afford him opportunity to participate in the funeral arrangements and to attend the funeral. The decision rendered in the case of *Albrook v. Western Union Telegraph Co.*, 150 Northwestern Reporter 75. In this case defendant was found to have carelessly delayed delivery of a telegram notifying plaintiff that his mother was dying, resulting in his being deprived of participating in the funeral arrangements, although he arrived in ample time for the funeral. The court held that plaintiff was entitled to recover damages for mental anguish sustained by him in consequence of being prevented from reaching the place of death in time to participate in the arrangements for the funeral, even though on his arrival he found that the arrangements made were satisfactory to him. The fact that he found them satisfactory did not wipe out the anxiety he felt until his arrival.

CHAPTER XXII

RELATIONS WITH TRANSPORTATION COMPANIES

SECTION 113 LIABILITY FOR LOSS

When is a railway or express company liable for loss of caskets, etc., consigned to a funeral director but lost or destroyed at the destination while awaiting delivery? This is important to funeral directors, and especially to those who receive extensive shipments, as is illustrated by a decision handed down by the Tennessee Supreme Court in the case of *Potter Bros v Southern Express Company*, 183 South-western Reporter 157. This was a suit by plaintiffs to recover the value of a steel burial vault which was rendered worthless in a fire which destroyed the express company's warehouse. In deciding the case in the express company's favor the court applied the general rule of law that although a railway or express company is an insurer of the safety of freight until the consignee has had reasonable opportunity to accept delivery, after that time the company's liability as *carrier* ceases, and thereafter, as *warehouseman*, it is liable for loss only in the event that the loss be due to negligence on the part of the company. The law on this subject is stated as follows by the Tennessee Court:

'The duty of an express company in respect of a delivery of consigned articles differs, usually and here, from that resting on railway carriers, in that it is required to deliver the goods to the consignee in person, or to his authorized agent, at his place of business or residence, the duty of carriage not terminating on the arrival of the goods at the station of destination . . . However, the rule is subject to qualifications. One of these is that a delivery at such a place of business may be waived by the consignee. Where there is an offer to make delivery, declined by the consignee in order to serve his convenience, the company's liability as a common carrier is from that moment at an end, and the consignee has no power to prolong that liability, however inconvenient it may be for him to receive the goods. . . In this case the company's offer of prompt delivery was followed by the consignee's request that the vault be left where it then laid—on the depot platform—so that its further movement therefrom to the cemetery might be made by the servants of the consignee. This terminated the liability of the carrier.

"Where the carrier is ready to deliver the goods, but on account of the lateness of the hour they are left in the depot overnight, at the consignee's request, although probably for the convenience of both parties, the carrier remains liable thereafter as warehouseman only, without regard to the length of time that has elapsed since the arrival of the goods. . . . The reason for this is obvious. The carrier is entitled to complete its contract and to release itself from its liability as insurer of the goods, by promptly delivering them upon their arrival. If, being ready and offering to make the delivery, it is induced by the consignee not to perform that part of its duty, and not to perform it merely for the purpose of serving the convenience of the consignee, the latter cannot be permitted, should the goods perish after they would have been delivered but for the request that they should not be delivered, to contend that their non-delivery, occasioned by their destruction in the interim, was a breach of the carrier's original duty to deliver. . . .

"The fundamental error in the argument of the Court of Appeals is the assumption that the original duty to deliver had not been performed and would not be until the vault was placed on the platform. By the undisputed testimony, it was on the platform when the consignee's instructions were given that it be left there. Its only movement from that place was into the warehouse. The duty of carrier and the liability of insurer being then at an end, that step on the part of the company was taken in its capacity of warehouseman. The manifest and avowed purpose was to safeguard the vault from injury by trespassers."

SECTION 114. LIABILITY FOR NEGLIGENT DELAYS

In the case of *Byers v Southern Express Co*, 36 Supreme Court Reporter, 410, the United States Supreme Court held that there could be no recovery of damages for

mental anguish suffered by plaintiff because defendant negligently delayed delivery of a casket and grave clothes intended for his wife's burial. This was an interstate shipment, and the decision must be regarded as final on the question of liability for mere mental anguish suffered as a result of mere negligence in interstate transactions relating to burial of the dead, although the decision does not affect the rule in force in Texas and a few other states, holding that as to *intrastate* transactions there may be recovery for mental anguish.

Incidentally, the Supreme Court noted that the highest courts of the Dakotas, Florida, Georgia, Illinois, Indiana, Kansas, Minnesota, Mississippi, Missouri, New York, Ohio, Oklahoma, Virginia and West Virginia, were all in line on the proposition that there can be no recovery for mere mental anguish based on mere negligence. The states holding the contrary were Alabama, Iowa, Kentucky, Nevada, North Carolina, Tennessee and Texas. But, as already noted, even in these last named states the courts would be bound to respect the United States Supreme Court decision as to *interstate* shipments of bodies.

In the Minnesota case of *Beaulieu v. Great Northern Railway Co.*, 103 Minn. 47, the court refused to award damages for mental anguish resulting from the railroad company's negligence in delaying delivery of the body of plaintiff's child, whereby the funeral arrangements were necessarily postponed twenty-four hours. Plaintiff sought to recover \$3,000 damages on account of suffering distress of mind, pain and anguish because of the delay. The court said in part:

"The complaint before us charges, at most, a negligent failure to perform the contract, for the breach of which damages for mental anguish are demanded, and the case is not brought within those wherein such damages are awarded for the *malicious and wanton breach*, to which we have adverted."

The decision then proceeds to distinguish the case from the earlier decision in the case of *Lindh v. Great Northern Railway Co.*, 99 Minn. 408, wherein the same court allowed recovery for mental anguish suffered on account of the deliberate wrong of defendant's employees in permitting a casket with a body contained in it to be exposed to inclement weather on a station platform.

A decision of the North Carolina Supreme Court bears on liability for damages because of negligent delay in delivering a coffin intended for use in burying a particular body. The case of *Cooper v. Southern Express Company*, 81 Southeastern Reporter 743, in which the question arose, involved a suit against the express company for negligently carrying a coffin by its destination, but what the court decides would be equally applicable to a case where an undertaker contracts to deliver a coffin within certain time and fails to do so. The court found that where a coffin is ordered and fails to arrive within the time in which it was agreed that it should be delivered, the purchaser must use all reasonable diligence to procure a substitute coffin, and that if he fails to do so, there can be no recovery for mental anguish which could have been avoided by using such diligence—that is, an undertaker or express company which agrees to deliver a coffin so that it can be used at a certain time, but fails to do so, cannot be held liable in damages for mental anguish suffered by the surviving relatives on account of any interference with the funeral plans, so far as the damages might have been avoided or lessened by taking steps to procure another coffin.

The facts in the case which was before the North Carolina Supreme Court were as follows: A child having died, its grandfather shipped a coffin by express on a train scheduled to reach the station near the family home at 11 a. m.; but the coffin was carried by that station. The grandfather was on the train, and after alighting at the station discovered that the coffin was not put off. If he had telegraphed for another coffin it would have reached the station at about 2 p. m., so that the body could have been shipped late in the afternoon, as had been planned. But he did not do this. The coffin which was carried by the station was brought back and delivered about 5 p. m., too late for shipment of the body as intended. The funeral took place the following noon at a nearby cemetery, whereas it had been intended to ship the body about fifteen miles; but it appears that, by driving overland, the interment could have been made at the cemetery originally intended—seventeen miles away. The parents of the child then sued for damages on the ground that they had suffered mental anguish in consequence of the delayed delivery of the coffin, and were awarded judgment in the trial court, but the Supreme Court reversed the judgment on the grounds above stated. On an additional ground for denying the mother's right to recover, the court said:

"It is also in evidence that the mother was in such condition that she did not know of this delay, nor of the fact that burial was intended to be at Pleasant Church, or that the body was buried where it was. Upon the plaintiff's own testimony, therefore, she could not have suffered any mental anguish during the delay, or from disinterment which she did not know."

The Georgia Court of Appeals in the case of *McNeal v. Seaboard Air Line Railway Co.*, 98 Southeastern Reporter, 409, decided that where the wrong complained of is mere delay of a funeral and the injury complained of is confined to mental suffering, the law affords no right to recover damages. But the decision recognized the point that where grief is caused in such cases by wanton wrong, there may be an allowance of damages.

In the Georgia case, plaintiffs sued to recover damages for grief suffered in negligent failure of the defendant railway company to transport the remains of their father on a certain train on which plaintiffs traveled to the place of interment as members of the funeral party. On arrival of the train at the destination, it was found that the body was not on the train, necessitating a postponement of the funeral from 11:30 a. m. to 3:30 p. m. Plaintiffs asserted that this resulted in a severe nervous and mental shock from which they did not immediately recover.

The trial judge ruled that the complaints in the case did not show a right of action, and the Court of Appeals affirmed the decision. Referring to a decision of the Supreme Court of the state the opinion says in part:

"The law protects the person and the purse. The person includes the reputation. The body, reputation, and property of the citizen are not to be invaded without responsibility in damages to the sufferer. But outside these protected spheres, the law does not yet attempt to guard the peace of mind, the feelings or the happiness of every one, by giving recovery of damages for mental anguish produced by mere negligence. There is no right, capable of enforcement by process of law, to possess or maintain without disturbance any particular condition of feeling. The law leaves feeling to be helped and vindicated by the tremendous force of sympathy. The temperaments of individuals are various and variable, and the imagination exerts a powerful and incalculable influence in injuries of this kind. There are many moral obligations too delicate and subtle to be enforced in the rude way of giving money compensation for their violation. Perhaps the feelings find as full protection as it is possible to give in moral law and a responsible public opinion. The civil law is a practical business system, dealing with what is tangible, and does not undertake to redress psychological injuries."

"We are not unmindful of the fact that this court has said:

"While mental suffering, unaccompanied by injury to purse or person, affords no basis for an action predicated upon wrongful acts merely negligent, yet such damages may be recovered in those cases where the plaintiff has suffered at the hands of the defendant a wanton, voluntary, or intentional wrong, the natural result of which is the causation of mental suffering and wounded feelings."

The duty of a railway or express company to use reasonable care to expedite delivery of a corpse by causing transportation to be made over the shortest available route is recognized in a leading case decided by the Texas Court of Civil Appeals—*Fuller v. Wells Fargo & Co's Express*, 13 Texas Civil Appeals Reports, 610.

The plaintiff's son died at Phoenix, Ariz., and a relative contracted with the defendant for transportation of the remains to Paris, Tex., for interment. The most direct route was via El Paso and Fort Worth, but the defendant shipped the body via El Paso and San Antonio, which was defendant's usual route of shipment and was about 600 miles farther than by way of Fort Worth. Twenty-seven hours' delay in delivery resulted, in consequence of which it became necessary to abandon funeral services which had been planned to be held at a church. The coffin was not opened, except to show the face through the glass, and, after a short service at the plaintiff's home, interment was made at night in the presence of only about twenty-five or thirty persons. The plaintiff claimed that on account of this delay and the consequences just mentioned, he suffered great distress of mind, and he sued for and recovered \$2,000 damages. In affirming this judgment, the Court of Civil Appeals said:

"Under the charge of the court the jury could not have rendered the verdict they did without finding that defendant failed to exercise due care and was negligent in the selection of a route by which to ship the body. There is testimony that will sustain such finding and therefore, in deference to the verdict, we so find."

"The court did not err in permitting T. A. Fuller to testify that he pointed out to defendant's agent at Phoenix on the maps of Arizona and Texas the route via El Paso and Fort Worth as the most direct route, and at El Paso objected to the body being sent via San Antonio and insisted on the agent there sending it via Fort Worth because it was the nearer route, etc."

"Nor is there any fatal variance between plaintiff's pleading and his evidence. It is true that the written contract did not in terms require shipment via Fort Worth; nor did it require it to be via San Antonio, but the law, which was part of the contract, required defendant to exercise reasonable care in selecting a route, and the petition charges that such care was not exercised."

"The verdict is large; but, as the law of this state allows actual damages to be recovered in such cases as compensation for mental suffering, we do not think this court should hold it to be excessive."

In reversing judgment against a railway company for damages resulting from delay in transporting a body, the Alabama Supreme Court laid down several important rules of law governing such cases and of peculiar interest to funeral directors who have frequent occasion to arrange for the transportation of bodies. The decision was announced in the case of *Renes v. Southern Railway Company*, 68 Southern Reporter, 987.

Plaintiff's son died in a Philadelphia hospital, and arrangements were made for him to accompany the body on a through train to Birmingham, operated over the Pennsylvania Railroad to Washington and thence over the Southern Railway to the destination. As the train was leaving Washington plaintiff noticed a coffin standing on the station platform, and suspecting that it was his son's corpse, he informed the conductor, who later told him that his son's corpse was not on the train. Plaintiff then left his train to wait for the one carrying the body, and was thus delayed several hours in reaching his destination. Later he brought suit against the Southern road for \$3,000 damages and a jury awarded him \$1,000, but this judgment was reversed by the Supreme Court on the ground that liability of the defendant railway company was not sufficiently established.

The main ground of the suit was that the defendant was negligent in failing to have the body carried on the first train, as was agreed with the Pennsylvania agents. But the Supreme Court holds: "The fact that a through passage is sold over a receiving and connecting line does not show such relation between the lines as to render the terminal line *prima facie* liable for any breach of contract or duty on the part of the receiving line. . . . The responsibility peculiar to a common carrier is not devolved on the next connecting carrier until the receiving carrier has delivered the goods to the former with directions for their shipment, the place of destination, and to whom consigned. Until this is done, the relation of common carrier is not established between the shipper and the connecting carrier. . . . To relieve the first carrier from further liability and charge the second carrier, it is necessary that the goods be delivered or properly tendered by the first carrier to the second."

In this case the only evidence of a delivery of the corpse by the Pennsylvania road to defendant was found in plaintiff's statement that he saw the coffin standing on the platform in Washington. On this phase the court said. "In the absence of any evidence showing a course of dealing between these carriers by which placing and leaving a coffined body on a depot truck in the neighborhood of the terminal carrier's track constituted a tender or delivery to it for immediate transportation over its line, no inference can justly arise of a default on its part. . . . The burden of proof was upon the plaintiff to show a tender or delivery of the corpse by the receiving carrier to the terminal carrier in reasonable time for transportation on plaintiff's train, as an essential foundation for the breach of the duty charged."

On a rehearing of the case on appeal, it was argued in plaintiff's favor that it must be presumed, in the absence of a showing on the part of the defendant railway company, that the delay in transporting the body occurred on the line of the terminal carrier. But the court said that the presumption could not be indulged in this case, because it appeared that the coffin had been removed by the Pennsylvania Railroad's employees at Washington and that the five or ten minutes that it had remained on the truck before the train left over defendant's line was not sufficiently long to charge defendant with knowledge of its presence, in the absence of any direct information to defendant that the body was there.

In the case of *Hull v. Louisville and Nashville Railroad Company*, 68 Southwestern Reporter 433, the Kentucky Court of Appeals decided that \$1,640 was excessive recovery for delayed transportation of a body where the only result was to postpone interment from one afternoon until the next morning; it appearing that the condition of the body was not such as to require speedy interment. The court said: "No sound distinction can be maintained between the *Telegraph* cases and this case. They rest upon the principle that damages naturally resulting from a wrongful act, and fairly within the contemplation of the parties, may be recovered. The logic of appellant's position, if followed, would lead to the conclusion that if it had lost this corpse, however negligently, no action could be maintained, at least for any substantial recovery. For if there is no property in a corpse, and there can be no recovery for mental suffering for the failure to carry and deliver it at the proper time, then for a very great wrong there would be practically no remedy. . . . The damages for the loss of a corpse and those for the delay in delivering it differ only in degree."

The Arkansas Supreme Court refused to hold a railway company liable for

mental anguish of bereaved relatives who were indirectly prevented from attending a funeral by reason of failure of a train to stop at a flag station when properly flagged. (*Mizell v. C., R. I & P. Ry. Co.*, 175 Southwestern Reporter 396.) Had that train been the only means available to reach the place of funeral, the company would, no doubt, have been liable. But it appeared that plaintiff undertook to walk some distance to a place where another train could be taken, and was prevented from adopting this latter means of going to the funeral only by reason of becoming ill while walking through the rain to the second station. The court holds that the connection between plaintiff's grief, and the defendant's failure to stop its train was too remote to afford a basis for recovery.

SECTION 115 MISTREATMENT OF BODIES

There is no liability in damages for mental anguish of surviving relatives on account of an accident in handling a dead body, unless the accident be caused by willfulness. This is to be taken as a fair statement of a general rule of law applying in most of the states, according to a decision handed down by the Vermont Supreme Court in the case of *Nichols v. Central Vermont Railway Co.*, 109 Atlantic Reporter, 905.

This suit involved a claim against a railway company whose employee so negligently moved an express truck on a station platform that a box containing the body of plaintiff's son was precipitated upon a truck, resulting in slight bruising of the body and its disarrangement in the casket.

At the conclusion of the trial the trial judge dismissed the suit on the ground that the law did not warrant an award of damages for mere mental suffering experienced by plaintiff under the circumstances. Affirming this conclusion on appeal the Vermont Supreme Court said, in part:

"While it appeared that the plaintiff's husband [the deceased's stepfather] paid for the transportation of the corpse and was named in the ticket as the escort thereof, she and not her husband was the next of kin of the deceased, and consequently had a right in the body that was invaded by the negligent act of the defendant. It is undoubtedly the law that, while a dead body is not considered as property in the technical sense of the word, yet the law recognizes a right somewhat akin to property, arising out of the duty of the nearest relative to bury their dead, which authorizes and requires them to take possession of the dead body for the purpose of burial. The right is a personal and exclusive right to the custody and possession of the remains, and in the absence of testamentary disposition, belongs to the surviving husband or wife, if any, or, if there be none, then to the next of kin. Note, *Ann Cas* 1918D, 733. It is a right which the law will recognize and enforce by appropriate remedy, and includes the right to have the corpse in the same condition in which it was when death supervened. We have no occasion to consider whether the contract relation of plaintiff's husband to the transportation of the corpse would, in the circumstances, enable him to maintain an action for damages; nor is it necessary to the decision of the case as presented on review to consider whether damages other than for mental suffering are recoverable in an action of this character.

"Conceding for the purposes of discussion that the happening of this accident, shocking to the plaintiff's sensibilities as it must have been, and we can readily see that it would naturally occasion acute mental distress, was an invasion of her legal rights, it does not follow that damages for such suffering are necessarily recoverable. The precise question is whether damages for mental suffering independent of physical injury are recoverable when occasioned by the mere negligent conduct of the defendant. It is at once apparent that the inquiry excludes those cases where the mental suffering is occasioned by physical injury, and the still wider range of cases where it is the result of willful or malicious conduct on the part of the wrongdoer."

Right of a son to recover damages against a railway company for mistreatment of a box or casket containing the remains of his mother was upheld by the Missouri Supreme Court in the case of *Wall v. St. Louis & San Francisco Railroad Co.*, 182 Southwestern Reporter, 1057.

The first point sought to be made by the defendant against the right to maintain the suit was that plaintiff was only one of several children who were equally entitled to recover, if at all, and that the others had not been joined as parties to the suit. The other point was that the verdict of \$500 punitive damages returned by the jury was grossly excessive. Both objections were decided against the railway company.

Plaintiff and several witnesses in his behalf testified that when the box and casket containing his mother's body were being unloaded at a railway junction a baggage-man pushed one end of the box onto a truck, threw the other end out of the car door, and then threw a heavy trunk on top of the box. Thereupon the plaintiff requested the baggage-man not to do that, stating that the box contained his mother's body. The

baggage man replied, "To hell with it," and delivered himself of a few profane and vulgar epithets directed to the failure of assistance. He continued to throw trunks on the box until he had three on it and bent the thumb screws of the box down and burst the sides of the box.

In affirming the judgment in plaintiff's favor, the Supreme Court said:

"The right to recover in this case, as discussed by the St. Louis Court of Appeals when the case was there, is not a property right in the commercial sense, but a right, as defendant concedes of the near of kin to possess and control the body for the purpose of a decent burial.

The plaintiff being the person who had undertaken to perform the duty of giving his deceased mother a decent burial, and being the only person who was affected financially by the actual damages to the box furnished exclusively by him, and being also the only person who observed or was directly affected by the outrages committed by the baggage man, he was the proper and only party entitled to sue. The theory contended for in behalf of the defendant, if applied, would lead to absurd results. According to that contention, babes and far-away relatives, who never knew of the disgraceful occurrences, would be necessary parties, those who suffered no pecuniary loss would have to be made parties, and as to them no punitive damages could be assessed.

The contention that the punitive damages are excessive is based on the assertion that they bear no just proportion to the actual damages found, and hence this indicates passion and prejudice.

The utter and wicked disregard with which the employee of defendant in this case treated the remains of plaintiff's deceased mother, when plaintiff was undertaking to perform his sad duty thereto, were such that we are convinced that the punishment administered by the jury is extremely moderate."

And a decision of the Minnesota Supreme Court in the case of *Lindh v. Great Northern Railway Company*, 99 Minn 408, sustained a judgment against the railway company for \$1,000 on account of the following stated circumstances. The company undertook to transport the body of plaintiff's wife. In taking the casket through a certain station it became necessary to transfer the same to another of the company's trains. In so doing defendant's employees carelessly left the casket out of doors upon a railroad truck and exposed it to rain, ignoring plaintiff's request to place the truck under cover, so that the rain might not get into the casket and injure the same or disfigure the remains. As a result the casket was soiled and the body disfigured. Plaintiff brought suit to recover damages for the mental anguish suffered by him and was awarded judgment as above stated.

In holding that a railway company was liable for permitting a coffin to remain exposed to the weather on a station platform so that it and the body in it became damaged by rain, the Georgia Supreme Court said in the case of *Wilson v. Louisville and Nashville Railroad Company*: "Death is unique. . . . A corpse in some respects is the strangest thing on earth. . . . It must be laid away. And the law—that rule of action which touches all human things—must touch also this thing in death. It is not surprising that the law relating to this mystery of what death leaves behind cannot be precisely brought within the letter of all the rules regarding corn, lumber and pig-iron. And yet the body must be buried or disposed of. If buried, it must be carried to the place of burial. And the law, in its all-sufficiency, must furnish some rule by legislative enactment, or analogy, or based on some sound legal principle, by which to determine between the living questions of the disposition of the dead and rights surrounding their bodies. In doing this, the courts will not close their eyes to the customs and necessities of civilization in dealing with the dead, and those sentiments connected with decently disposing of the remains of the departed which furnish one ground of difference between men and brutes." The court then goes into an exhaustive review of the history of burials and of the growth of legal interest in bodies, and in concluding says: "It certainly cannot be said by the defendant company that a corpse is sufficiently property for a railroad to receive and accept pay for its transportation, but is not sufficiently property to authorize a recovery for a breach of duty arising therefrom, or to prevent any duty from arising under such circumstances. If it received this body to be transported for hire, it was bound to discharge the duties arising from so doing, and for a failure to do so would be liable to an action." The court cites a Kentucky case where a railway company was held to be liable for injury to a corpse, caused by a collision between a train of the company and the hearse in which the body was being carried, due to negligence of the company.

Liability to surviving relatives for damages on account of rough handling of a coffin containing a body is upheld by the Alabama Court of Appeals in the case of *Birmingham Transfer Company v. Still*, 61 Southern Reporter, 611. The transfer company was employed by plaintiff to transfer a coffin containing his dead infant seven blocks, from one railway station to another in Birmingham, at a charge of \$2.50. The coffin

was placed on a one-horse dray, and when it arrived at the station where the father was waiting its arrival, the coffin was piled in with trunks, some of the trunks being over the coffin, and the negro men in charge were sitting on the trunks. Plaintiff sued the transfer company for damages claimed because of failure to transport the body in the manner contemplated by the contract, and for mental suffering occasioned by the treatment to which the coffin was subjected. From a judgment in plaintiff's favor, the company appealed, insisting that damages for mental pain and suffering are not recoverable in a case of this nature, and that the improper and wrongful treatment of a dead body, where there is no mutilation or physical injury to the corpse, cannot be made the basis of a recovery of damages for mental pain and suffering by the next of kin, although it was conceded by the company that the next of kin have the right to the custody of the body for the purposes of burial. The Alabama Court of Appeals refused to "subscribe to such a proposition," saying in part:

"The right of a father to care for, watch over, and bury, the dead body of his minor child has always been recognized and protected by the law; and whenever a legal right is violated or trespassed upon in this connection a real remedy is afforded by the law. In this case the evidence shows that the father was taking the corpse of his 2½-year-old daughter to its earthly resting place, and contracted with the defendant

. . . to carry it in a suitable and befitting manner, with due regard to the feelings and sensibilities of a parent thus situated. That this distance was but six or seven blocks, and that a price of \$2.50 was exacted and paid for the service, and that the charge for carrying a trunk or other ordinary article of baggage of the same bulk and weight between these two points was 25 cents, were facts sufficient, in themselves, to show that the parties contemplated a different service from that given, which was shown by practically the uncontradicted evidence to be that the corpse was carried in a way naturally calculated to wound the feelings of the afflicted father, and in the same manner as a trunk or other ordinary piece of baggage would be hauled through the streets, that is, on a dray, mingled together with several trunks, on which two negro men in sole charge were sitting. As was appositely said by the court in the opinion in the recent case of *Douglas v Stokes*, 149 Ky, 506, 509, 149 Southwestern Reporter, 849, 850: 'The most tender affections of the human heart cluster about the body of one's dead child. A man may recover for any injury or indignity done the body, and it would be a reproach to the law if physical injuries might be recovered for and not those incorporeal injuries which would cause much greater suffering and humiliation'. . . . Although, strictly speaking, there is no right of property in a dead body, the right of a parent, who has the custody of the remains of his dead child for burial, to recover for the injury to his feelings by any indignity purposely or wrongfully perpetrated upon the corpse of the child has been directly or by proper analogy recognized in many well considered cases."

Where a corpse is shipped from one state to another under a through transportation contract, the carrying railway or express company's breach of its implied agreement to use due care in handling the remains does not entitle an aggrieved relative to recover damages for mere mental anguish suffered in consequence of careless handling. This is the main point decided by the Alabama Supreme Court recently in the case of *Deavors v Southern Express Co*, 76 Southern Reporter, 288. Plaintiff's brother died at a Kansas town and the remains were shipped through by express to plaintiff. The body arrived at its destination in Alabama early in the morning, and there being no one present to receive it, and no night agent at the station, the coffin was placed under a leaky shed by the trainmen. As a result rain caused the body and shroud to become wet. Plaintiff sued for damages, but the courts decided that there was no right to recover under the circumstances, because it was an interstate shipment and federal laws do not permit recovery for mere mental anguish in such cases.

The Supreme Court holds, however, that as to shipments made wholly within the state of Alabama a different rule applies. The decision recognizes that there is a limited property right in dead bodies, which courts will protect, even though such bodies are not to be treated as property in a strict sense.

Numerous decisions of the Alabama and Kentucky courts are cited on the point that recovery may be had against telegraph companies for negligent handling of intrastate messages relating to deaths, burials and funerals of near relatives. The Kentucky Court of Appeals is quoted as saying:

"The most tender affections of the human heart cluster about the body of one's dead child. A man may recover for any injury or indignity done the body, and it would be a reproach to the law if physical injuries might be recovered for, and not those incorporeal injuries which would cause much greater suffering and humiliation."

In this Kentucky case it was held that a parent has the right to recover damages for mental pain and suffering caused by unauthorized use of a photograph of his dead

children's nude and deformed bodies, as constituting a violation of the parent's right of privacy of the bodies of his dead children

In a Wisconsin case, it has been decided that exemplary damages might be recovered for depriving the plaintiff of the use of a hearse and stopping it as he was burying the body of his child, although it was held in that case that as there was no actual damage or physical injury there could be no recovery for mental suffering.

SECTION 116 LIABILITY FOR HUMILIATING PASSENGERS

A decision of the South Carolina Supreme Court adjudicates rights of a surviving relative or friend to recover damages against a railway company for a wrongful act connected with the transportation of a dead body

Plaintiff, as brother-in-law of a decedent, was entrusted with arrangements for the transportation of the latter's body by train to the place of burial. He bought a ticket for carriage of the corpse as well as one for himself, and the funeral director obtained the proper check for the body from the baggage agent. But notwithstanding he had no right to do so, the ticket collector on the train not only demanded fare for the corpse, but exacted 70 cents more than the legal rate, all, of course to plaintiff's discomfort and humiliation. Plaintiff brought suit, and in affirming judgment in his favor against the railway company for \$600 damages the Supreme Court of South Carolina recognized that, as the person deputed by the surviving relatives to accompany the body to the place of burial, he was entitled to be unmolested. The court adds:

"While it has been decided in *Griffith v Railway Company*, 23 S C 25, 55 American Reports 1, that under the common law there can be no property in a corpse, and that decision was correct on the facts presented in that case, it is to be remembered that the common law of England had nothing to do with burial of deceased persons, etc., but that the ecclesiastic court had jurisdiction over such matters, and not the courts of the common law. This court will not commit itself to such a barbarous and savage doctrine as to hold that when a person died, no one has such a property interest in the body as to see the body decently interred, and the resting-place uninterfered with; and a relative or friend has a right to see that the body is protected, and these feelings in relation thereto protected. The case at bar shows that plaintiff had a peculiar interest as custodian by appointment of the husband and as a relative to carry the body to its final resting-place It was held in *Kelly v Tiner*, 91 S C 41, 74 S E 30, that a relative or friend had the right to prevent the desecration of a graveyard where relatives or friends were buried, and certainly in the case at bar the plaintiff under the facts of the case had the right to prevent any indignity to the corpse which was being transported for burial under threat of compulsion by ticket collector, and by means of such compulsion money was wrongfully and unlawfully extorted from plaintiff."

SECTION 117 RIGHTS AT RAILWAY STATIONS

The right of one to recover damages for injury sustained on the premises of another depends largely upon the circumstances under which the injured person was present at the time and place. In such cases, the question usually arises, "Was he a trespasser?" According to both law and common sense this is an important test of liability.

It is uniformly held by the courts that, as against a trespasser, an owner or occupant of premises is bound to do nothing wantonly tending to injure him. In other words, the fact that one positively forbidden to enter an undertaking establishment disregards the prohibition and comes on the place gives no right to deliberately expose him to a pitfall, although, of course, all reasonable forces may be used to eject him from the premises. But, as a general rule, a trespasser, pure and simple, runs the risk of dangerous conditions permitted to exist on the premises.

A higher degree of care must be exercised toward those persons who are expressly or impliedly invited to visit the premises. The maintenance of an undertaking establishment, or other place of business, stands as a mute invitation to the public to call and transact business there. Hence, it is well settled that a funeral director must keep every part of the premises to which he permits his business visitors to go in reasonably safe condition. To permit a stumbling block or pitfall to exist in a show-room under circumstances naturally tending to injure some unwary customer, is to invite a personal injury lawsuit. In short, the proprietor of every place of business is bound to use that degree of care for the safety of his business visitors that reasonably is to be expected of any ordinarily careful man. A reciprocal duty rests on the visitor to exercise his own faculties in the interest of his own safety.

These general principles of the law of negligence apply to railway station premises. A higher duty rests upon the railway company to guard the personal safety of passengers than of loafers and trespassers.

While little difficulty is encountered by the courts in discriminating between the rights

of trespassers and of passengers on and about station premises, it is not always an easy matter to determine the rights of persons who are not passengers and yet are not trespassers. For example, the funeral director who escorts a funeral party to a station, making all necessary transportation arrangements, etc., is neither a passenger nor a trespasser. What are his rights?

A solution of this practical question is found in a decision handed down by the Oklahoma Supreme Court in the case of *Stacy v St Louis & San Francisco Railroad Co.*, 171 Pacific Reporter, 870

In this case plaintiff sued for damages sustained by her in stumbling over a piece of pipe lying on a station platform one dark evening as she was walking toward the baggage car of a train to watch the loading of the remains of a friend. It was claimed that the railway company was negligent in permitting the pipe to remain as it was, especially as the platform was but dimly lighted. Plaintiff had no duties to perform in connection with the shipment of the body, and merely went to the station to see the funeral party off. In upholding the right of such visitors to railway stations to rely upon the safety of all parts of the premises to which the railway company might reasonably expect them to go, the court goes still farther by plainly intimating that any one having legitimate business at a railway station in connection with the shipment or receipt of a body has just as much right to be protected against injury occurring through neglect of the company to keep its premises in reasonably safe condition as has a passenger departing from or arriving at the station.

I quote the following pertinent language used by the Oklahoma court:

"One who goes upon the premises of a railway company to transact business with it, or its agents, or who is there by invitation of the company, express or implied, is lawfully there, and the railway company owes him a duty of using ordinary care in the construction and maintenance of its depot and platforms to avoid injuring him."

After citing decisions to the effect that persons going to depots to greet or to say farewell to friends and relatives are entitled to protection against injury through defective condition of the parts of the premises to which they are permitted to go, the court proceeds:

"It is true that these cases do not refer to persons accompanying a corpse, but it cannot be gainsaid that there is a duty to the remains of the dead on their way to their last resting place, as well as to the living. The same tender feelings which draw friends and relations to be with the traveler at the hour of his arrival or departure urge care and attention to the remains of the dead. A corpse is the proper subject of a shipment by rail, and for it is purchased a passenger ticket. We are unwilling to hold that a person may not, under proper conditions, accompany a corpse to a train, upon which it is about to be shipped without becoming a trespasser upon the carrier's property. But it does not follow that the plaintiff in this case is protected by the rule announced. The evidence tended to show strongly that she came to the depot to comfort Mrs. Gossett. She did not accompany the corpse, nor, so far as the record shows, did she have anything to do with the loading, transportation, or procuring tickets for the corpse. She might have come to the depot as accompanying Mrs. Gossett and to bid good-bye to Hazelrigg, and by reason thereof have become invitee of the carrier to whom it would owe a duty of ordinary care to see that she was not injured while going about the business legitimately connected with the object for which she came, and yet, if she abandoned those objects, and out of idle curiosity went to see the loading of the corpse, with which she had nothing to do, she would lose her status as an invitee and become a bare licensee, and, if injured otherwise than by lack of reasonable care, upon a part of the premises where the carrying out of the original objects of her visit would not reasonably have taken her, the carrier would not be liable. The evidence strongly tends to show that this is exactly what occurred, but there was some evidence which made her intention and objects in going to see the loading of the corpse, and linked therewith her status as an invitee or bare licensee at that time, a question for the jury under proper instructions of the court . . .

"Passengers, invitees, or others bearing similar relations to railway companies are not required to place themselves in straight jackets upon their arrival at stations, in which they must remain while awaiting the arrival of their train, or the departure or arrival of their friends. Such persons are entitled to reasonable freedom of action upon the platforms provided by the company for their accommodation and convenience, and the company is under obligation to keep in a safe condition all portions of their platform to which such persons do or would naturally resort. Whether the place where the plaintiff was injured was a place where she would naturally or ordinarily be likely to go is a question of fact for the jury."

CHAPTER XXIII

FUNERAL DIRECTOR AND EMBALMER IN VARIOUS RELATIONSHIPS

SECTION 118. AS A CARRIER OF PASSENGERS

NOTE The liability of funeral directors for injuries to funeral passengers is treated in Section 107

A funeral director who uses his automobile for hire in carrying families of deceased persons and their friends from residence to cemeteries and return while conducting funerals is engaged in the "occupation of carrying passengers for hire," within the meaning of an ordinance of a city imposing a license tax upon such occupation.

This is the gist of the holding of the Washington Supreme Court in the case of *City of Spokane v. Knight*, 172 Pacific Reporter, 823. The court affirmed a conviction of Mr. Knight in the Spokane police court and the imposition of a fine, in this proceeding which was doubtless a friendly one for the purpose of determining the validity of the ordinance.

From the facts of the case it appears that Mr. Knight owned an automobile used by him personally in going about the transaction of his business. The car was not kept for hire generally, but was used in carrying members of funeral parties to and from cemeteries, on which occasions he made a special charge for use of the car, in addition to other services rendered by him as undertaker. Mr. Knight had complied with the state law relating to the registration of motor vehicles, and, acting under legal advice, sought to establish the point that a license tax could not be imposed by the city against use of a motor vehicle licensed by the state. This attempt failed, however, the Supreme Court saying:

"At the time of so carrying those passengers for hire by appellant there was in force an ordinance of the city reading in part as follows:

"Every person, firm or corporation who shall by means of any vehicle carry any person or persons to or from any point within the corporate limits of the city of Spokane for hire shall pay a license fee of five dollars (\$5.00) per year for every vehicle so used. Provided, that nothing herein contained shall be considered to apply to railroad or street railroad cars, or hearses, ambulances or vehicles used exclusively for carrying pallbearers, nor to stages running on regular schedule to points outside the city."

"There was also then in force chapter 142 of the Laws of 1915, section 34 thereof reading in part as follows:

"The local authorities shall have no power to pass or enforce any ordinance, rule or regulation requiring of the owner or operator of any motor vehicle, any license other than an occupation license or tax which may be levied in only one city or town when such motor vehicle is engaged in intercity service, or permit to use the public highways except as herein provided or to exclude or to prohibit any motor vehicle whose owner has complied with the provisions of this act from the free use of the public highways, and all such rules, ordinances and regulations now in force are hereby declared to be of no validity or effect."

"It is contended in appellant's behalf that the provisions of the ordinance above quoted were rendered void by the enactment of section 34 of the Laws of 1915, above quoted from, and that the city was thereby divested of the powers to enforce the license provisions of the ordinance. It seems to us that but a casual reading of the law shows that this contention is untenable. The quoted portion of the ordinance purports to do nothing more than require the payment of an 'occupation license tax,' and the law plainly reserves this power in local authorities though it in general terms prohibits local authorities from regulating the use of automobiles. The portion of the ordinance brought to our attention does not indicate that the license tax herein provided for is anything more

than a revenue measure. The ordinance seems to us to clearly fall within the power which the legislature has reserved to the local authorities

"Contention is further made in appellant's behalf that by the operation of his automobile for hire in the manner he admits he operated it for hire on the occasion in question and other like occasions he was not doing so as an occupation. The argument seems to be that his occupation was only that of an undertaker. Plainly this operation of his automobile for hire was not within any of the exemptions from the license tax specified in the ordinance. The argument is, in effect, that appellant could furnish and operate for hire all the passenger carrying vehicles attending funerals conducted by him without paying the ordinance license tax therefore? We are of the opinion that while, generally speaking, appellant's occupation was that of an undertaker, he was also engaged in the occupation of carrying passengers for hire when he operated his automobile as he did on the occasion in question and when he so operated it for hire on other like occasions."

But provisions of the Illinois Workmen's Compensation Act, which entitle the employees of one engaged in the occupation of carrying passengers by land to an award to cover injuries sustained in the course of their employment, regardless of any question of negligence, cannot be applied in a case where the chauffeur of a limousine, hired by one funeral director to another to carry passengers to a funeral was injured, holds the decision of the Illinois Supreme Court handed down in the case of *F. W. Hochspeier, Inc., v. Industrial Board of Illinois*, 116 *Northeastern Reporter*, 121.

Plaintiff was engaged in the undertaking business in Chicago, under a charter incorporating it for the purpose of conducting the business of undertaking, operating undertaking rooms, conducting funerals, and hiring and operating necessary vehicles and cars for the transportation of passengers, packages, and freight in connection with such business. The corporation owned, besides a hearse, ambulance, wagons, and teams, three limousine cars used in carrying passengers to funerals and burials.

One of the company's chauffeurs was directed to take his car and operate it in carrying passengers to a funeral conducted by another funeral director. While returning from the cemetery his car collided with a street car, resulting in his fatal injury. His widow claimed compensation under the Illinois laws, and the State Industrial Board and the Circuit Court successively confirmed an award aggregating \$3,500 to be paid in weekly installments. But the Supreme Court has reversed the decision on the undertaking company's appeal. After referring to the fact that the question of liability turned on the point whether the company was engaged in the business "carriage by land," the higher court said:

"It is not claimed that one engaged in the business of undertaking is subject to the provisions of the act, in the absence of an election to come under it. The contention is that, by hiring its cars and drivers to others, plaintiff in error became a carrier of passengers by land, and liable to provide compensation to injured employees under the provisions of the act. The purpose for which plaintiff in error kept cars and employed drivers was to enable it to carry on its business of undertaking and conducting funerals. The use of cars and vehicles to carry passengers was an incident to that business, and the chauffeur, while engaged in driving cars to funerals and burials conducted by plaintiff in error, was not engaged in any of the hazardous occupations enumerated in the statute. Carrying passengers on such occasions did not constitute plaintiff in error a carrier by land, within the meaning of the statute.

"The business of operating undertaking rooms and conducting funerals, for which purpose plaintiff in error was incorporated, is not an employment which is mentioned in the statute as extra-hazardous, and the operation of cars kept for and driven to carry persons to funerals and burials conducted by plaintiff in error is an incident to the business, and would not make it a carrier, so as to bring the occupation or business under the provisions of the statute.

"Cars were not kept by plaintiff in error for the purpose of hiring them to carry passengers to funerals, but were only occasionally hired to other undertakers for that purpose. How often they were let to other undertakers does not appear, but the proof is that it was a custom among undertakers that, when one had need of extra cars for a burial, he would hire from other undertakers the number needed. We do not think that such use of plaintiff in error's cars brings it within the provisions of the statute as to carrier by land and subjects it to the liability under the Workmen's Compensation Act, when it would not have been liable under said act if Neumann had been driving the car to a burial conducted by plaintiff in error."

SECTION 719 RIGHTS UNDER WORKMEN'S COMPENSATION ACTS

The New York Workmen's Compensation Act, providing for allowances against employers in certain hazardous industries on account of injuries to employees was brought

in relation to the undertaker in the case of *State Industrial Commission v Newman*, 118 *Northeastern Reporter*, 794, decided by the New York Court of Appeals.

The act provided for an allowance of reasonable funeral expenses, not exceeding \$100, in case of fatal injury. Another section of the law provided that where an employee subject to the act died, leaving no "persons entitled to compensation," \$100 should be paid over to the state treasurer to constitute a fund for the benefit of other unfortunate employees who sustained certain repeated injuries.

In the case above cited, an employee had died without leaving dependent relatives and \$100 was awarded the funeral director who interred her remains in payment for funeral expenses. Because of this award it was claimed that the funeral director was a "person entitled to compensation" within the statute referred to, and that therefore there was no warrant for any payment to the state treasurer under the other statute referred to. But the court decided that his contention was unsound, that the quoted phrase refers to dependent relatives; and that the award to a funeral director cannot be regarded as "compensation," which is used in this law in the sense of accident or death benefits.

See, also, preceding section

SECTION 120. AS AN ASSOCIATION MEMBER

The Kentucky Court of Appeals held, in the case of *Funeral Directors' Association v Bax*, 157 *Southwestern Reporter*, 922, that a member of an incorporated funeral directors' association, who used an auto vehicle for the transportation of bodies of the poor to medical institutions or places of burial, was not subject to suspension from the association as for violating a resolution of the association forbidding the use of auto vehicles for "funeral purposes" without the approval of the association, the court holding that the word "funeral," as used in the resolution, contemplated a burial in a cemetery in the presence of the family and friends of the deceased. The court adds, however, "Of course the burial of the poor, when the obsequies are attended by their families or friends or acquaintances, however few the number or humble the equipage, is as much a funeral as if the interment were attended with all the pomp and ceremony that accompanies the burial of the rich."

SECTION 121. RIGHTS ON PRIVATE PREMISES

A funeral director did not render himself liable as for trespass or assault in returning a body to a house where he received it, on default in payment of his charges, holds the Michigan Supreme Court in the case of *Alexander v Pacholek*, 192 *Northwestern Reporter*, 652. The court, also, ruled that any fright or mental distress suffered by the plaintiff, wife of the household, could not be made a basis for a damage claim, unless accompanied by physical injury.

Defendant conducts an undertaking business in Detroit, and was called by plaintiff, or some one in her household, and advised that an infant had died in her house during the preceding night, and he was requested to come and take charge of and bury it. Defendant's assistant at once repaired to plaintiff's home, and found that the baby belonged to a Mrs. Lago, who had been a guest for several weeks at plaintiff's home. The baby had prematurely arrived, and was slightly deformed in its forehead. Mrs. Lago made arrangements with the assistant to take the baby to the funeral parlors, prepare it for burial, and inter it. The mother did not care to have a funeral at plaintiff's house. The price agreed upon for defendant's services was \$39. Mrs. Lago accompanied defendant to the parlors, where the death certificate and other details were arranged. When she left she advised defendant she would pay him the following morning. She did not do so, and between the hours of 11 and 12 in the forenoon, defendant's assistant placed the body in the car and went to plaintiff's house, and inquired for Mrs. Lago. He was advised that she was not in. He then inquired who was going to pay for the burial. Plaintiff replied she did not know; she was not. Defendant then said to her that he would have to have his pay or would be obliged to leave the body. The assistant then went to the car, and took the container in which the body had been placed, went into the house, opened it and laid the clothing on the davenport from which he had taken the body the morning before. When plaintiff saw that he was preparing to leave the body she yielded and gave him his money, whereupon defendant replaced the clothes in the container and left plaintiff's premises, and afterward buried it in accordance with the agreement.

Plaintiff claimed that she was so horrified and frightened over the threat of defendant to leave the body of the deformed child that she fainted after defendant left her house, and that ten days later she suffered a miscarriage by reason thereof, and was made sick for several days thereafter. At the conclusion of the proofs defendant requested a directed

verdict, but the trial court overruled the motion, and submitted the question to the jury. After considering the question for a time, they awarded plaintiff damages in the sum of \$500.

The Supreme Court reversed judgment in plaintiff's favor for reasons stated as follows:

"Counsel for plaintiff make the argument that defendant was a trespasser when he went back into the house the second time to return the body, because he went in without knocking. We have serious doubt whether this is a material fact. If he were a trespasser he was a trespasser on the real estate, and did not inflict any damage upon plaintiff's person. But, in any event, we do not think he was a trespasser on the premises. In the first instance he was invited to come on the premises by Mrs. Lago, a guest of plaintiff, and with plaintiff's consent. He was still engaged in the business for which he was invited to come onto the premises. On this visit he knocked at the door and was admitted. After he had talked with plaintiff and learned he was not going to be paid, he went out to the car to get the body to return it to the place from which he had taken it the day before. When he returned with the body he would not be expected to knock before entering, any more than a peddler who had been regularly admitted and returned to his wagon to get some goods to exhibit. Defendant had an implied, if not an express, license to go upon the premises as he did. 25 Cyc 642.

"It is asserted, but not argued, by plaintiff's counsel that when defendant made this visit and returned the body, he was guilty of an assault. There is nothing in the record that has been called to our attention which would support this assertion. It is not shown that defendant offered any physical violence, or that he threatened her, or that any such thing was contemplated by defendant. Unless there was a threat or offer on the part of defendant to do plaintiff physical injury, there was no assault, within the law. 3 Cyc 1066.

"Whatever may be the merits of the respective rules of damage, this court has aligned itself with those courts which hold that no damages can be assessed for fright or mental distress unless accompanied with physical injury. The case is devoid of any evidence of assault, and if we apply the rule laid down in *Nelson v Crawford* the defendant was entitled to a directed verdict. The trial court was in error in not granting defendant's motion."

SECTION 122 IN BUYING CEMETERY LOTS

A Kansas funeral director asked concerning his right to sell one-half of a cemetery lot when persons fail to pay for it after burying their dead on one side of the lot. "We have a good many cases of this kind," he wrote, "where the parties failed to pay for the funeral expenses or cemetery lot, and as we must stand good for the lot, we are obliged to pay for it. The cemetery association will make out the deed to us since we did the paying."

If the funeral director holds unqualified title to the lot, there appears to be no reason why he cannot dispose of that part of the lot not devoted to graves already made, where the persons arranging for the burial have failed to complete payment for the lot, in which case, of course, they are entitled to a transfer of title to the lot.

Section 2266 of the Kansas Statutes, 1915, relating to cemetery corporations, provides that "Every lot sold and conveyed in such cemetery shall be held by the proprietor, for the purpose of sepulture only, and shall not be subject to attachment or execution. Provided, That where such corporation has agreed to convey a certain lot or lots to a purchaser, and such purchaser has failed for a period of one year following the date of such agreement to pay the purchase price therefor, such agreement, at the option and election of the cemetery corporation, shall be and remain canceled, void, and of no effect. Provided, further, That if within the said period of one year the purchaser shall cause any dead person to be buried upon said lot or lots, so agreed to be sold, that portion of said lot or lots actually occupied by the said grave and a strip of ground one foot wide adjacent . . . shall not be sold by such cemetery corporation to any other person, or persons, but, if the purchaser shall voluntarily remove or cause to be removed the dead person . . . such corporation may convey, sell and dispose of such grave and the ground so surrounding the same as above described to any other persons or persons."

It seems to us that a funeral director should avoid complications of this kind whenever possible. Why he should obligate himself beyond acting as mere agent for his patrons in arranging for grave space or a lot is not readily apparent. If the funeral director does go beyond this, he should first assure himself that the policy and rules of the cemetery association will sanction an arrangement under which the funeral director is to take title to a lot and assign his rights to a patron on the latter reimbursing the funeral director for his outlay, and resell the unoccupied part of the lot on the patron

failing to pay Then there should be a distinct written agreement with the patron to the same effect

We see no legal bar to an agreement of this kind, subject to its being permitted by the cemetery association's rules Such contract may not be strictly necessary where the funeral director retains title to the lot, but it is best to have it, since it will avoid ground for quibble as to the patron being the equitable owner of the lot

But where a deed is issued to the patron, or is contracted to be issued to him, by the association, and the association looks to the funeral director for payment, and there is no agreement reserving the right to resell the unoccupied portion of the lot on non-payment by the patron, it seems that there is no right to make such resale That makes it a plain case where the funeral director has been improvident enough to buy something for some one else without protecting himself in the matter of reimbursement And the association will have no right to deed the lot to the funeral director merely because he may have paid for it, if it was the understanding that the lot was to be deeded to the patron

The simpler way would appear to be to merely act for the patron as agent in arranging for the lot, and let the association forfeit the unused portion under the authority given by the statute above cited if the buyer fails to pay up If the funeral director's patron is not wholly responsible financially, and the cemetery association is not willing to trust him, it is not easily to be understood why the funeral director should be willing to do so But if the funeral director is good hearted enough to be willing to stand good for any part of what is to be due the association, it would seem that all reasonable generosity stops with guaranty of the payment for a single grave space If security for reimbursement against liability on the guaranty is desired it should be specially arranged for, the same as security for the payment of the undertaker's bill may be reserved, by personal guaranty by some third person, or by chattel mortgage, or some similar security

SECTION 123 AS EXPERT WITNESSES

Ordinarily, a witness in court is merely permitted to testify to facts known by him It is for the judge or jury trying the case to draw conclusions from those facts However, it frequently becomes necessary for a judge or jury to rely on the judgment of experts And an undertaker may be called to give expert testimony on matters peculiarly within the scope of his profession However, like other expert witnesses, he must show his qualifications to express an opinion before it will be received

The subject is illustrative by the decision of the Pennsylvania Supreme Court in the murder case of *Commonwealth v Farrell*, 187 Pennsylvania State Reports, 408, where the court said

"Two things must concur to justify the admission of an expert witness First, the subject under examination must be one that requires that the court and jury have the aid of knowledge or experience such as men not specially skilled do not have, and such therefore as cannot be obtained from ordinary witnesses Second, the witness called as an expert must possess the knowledge, skill or experience needed to inform and guide the court and jury in the particular case Upon such a question such a witness may be called and may testify, not merely to facts, but to his conclusions from the facts, because the court and jury are without the knowledge necessary to enable them to draw the conclusions for themselves without aid

"The question about the length of time after death when rigor mortis may be expected to set in was a question for expert medical testimony Long experience and observation might stand in lieu of the study of books and qualify one to speak as an expert upon this subject, but the witness called as an expert upon this question had no medical knowledge, had read nothing on the subject, and had no experience except as an undertaker's assistant in preparing dead bodies for burial His attention as an undertaker does not seem to have been specially directed to this question, and he frankly stated that he was not an expert upon the particular subject"

SECTION 124 AS A TELEPHONE SUBSCRIBER

The funeral director who depends to any material degree upon telephone calls will be interested to know that the courts have decided that a telephone company is liable for damages sustained by a business subscriber through omission of his name and number from a directory Although the suit in which this decision was announced is somewhat novel in its facts, the underlying legal principle is nearly as old as the art of embalming—the principle that one who breaks a business contract is liable for all damages sustained by the other party as a natural consequence of the breach The ordinary contract between a subscriber and a telephone company requires the latter to maintain the former's name and number in directories issued, and loss of business by a funeral

director must be a probable result of omission of his name from a directory in which his competitors are represented, especially in cities where personal acquaintance is not the potent factor in getting business as it is in smaller communities.

SECTION 125. LIABILITY OF GARAGE AND LIVERY STABLE KEEPERS

Funeral directors who keep their hearses, other vehicles, or horses at a livery stable or garage when not in use may mistakenly assume that while the property is in such custody, the keeper is an insurer of its safety against fire, theft, etc. This is not the law, unless the keeper has undertaken to guarantee the funeral director against loss. In the absence of such special undertaking, a liveryman or garage keeper is merely bound to use a reasonable degree to secure the safekeeping of the property. Before loss of the property by fire or larceny can fix liability against him, it must appear that the loss would not have occurred except for his fault.

An object lesson of importance to funeral directors is presented by the decision which the Connecticut Supreme Court of Errors handed down in the case of *Bradley v. Cunningham*, 23 Atlantic Reporter 932. The most important warning suggested is that the place where hearses or other vehicles are kept should not be changed without obtaining permission of the insurance companies which have issued policies insuring them against fire at a definite location. Defendants, a firm of undertakers, entered into an agreement with plaintiff, a livery stable keeper, whereby he was to store a hearse for them and furnish horses and a driver whenever the hearse should be used, but there was no understanding that the vehicle should be kept at either one of the two barns which plaintiff owned and operated. After an insurance policy had been issued insuring defendants against loss of the hearse by fire while it should be located at the barn to which it was first taken, plaintiff, without defendants' knowledge or consent, removed the hearse to the other barn, and while it remained there it was destroyed in a fire which consumed that stable. Defendants thereupon not only refused to pay charges which had become due plaintiff, but, when suit was brought by him to recover them, they filed a counterclaim for the value of the hearse, because the insurance company refused to pay the amount of the policy on the ground of the removal of the hearse from its original location. The trial court granted judgment in defendants' favor, but it was reversed by the Connecticut Supreme Court of Errors, which decided that the livery stable keeper was not liable, especially since he did not know that the hearse was insured, although his own vehicles were insured and he understood that in removing them from one barn to another he was bound to obtain permission of the insurance company to the removal.

That a liveryman who contracts to furnish vehicles for a funeral and then orders them away just as they are about to be used, because of rules of an association to which he belongs prohibiting members from furnishing vehicles where the undertaker in charge patronizes nonunion liverymen, is liable in exemplary, as well as actual, damages to the relative of deceased who hired the vehicles, has been declared by the courts. In a Wisconsin case reported at page 1, volume 106, Wisconsin Supreme Court Reports, the proposition above stated was decided. The court also held that a combination of liverymen in a city to limit their services to persons patronizing them exclusively, and to monopolize the livery business in the city, including service for funerals, and to carry prices to and maintain them at such a level as the combination may see fit to adopt, and to so stifle competition in regard to such business as to paralyze individual effort and compel every person, in order to obtain proper facilities for a funeral, to submit to the dictates of the combine, is unlawful as being against public policy. But although the court held that the person who hired the vehicles was entitled to both actual and compensatory damages, the Wisconsin Supreme Court decided that there could be no recovery for injury to his feelings. The decision in the case, however, condemns "a combination which will resort to such ruthless breaking in upon the solemnities of a funeral ceremony, or that aims to entirely monopolize such an essential to the burial of the dead according to the customs of the country as is usually furnished in cities by liverymen It would be hard to conceive of a combination more odiously detrimental to the public interests, and more heartlessly oppressive to individuals."

SECTION 126. DEFAMATION OF FUNERAL DIRECTORS

An interesting case was decided by the Iowa Supreme Court, relating to libel of a funeral director (159 Northwestern Reporter, 589).

The case was disposed of without any trial on the actual facts of the transaction, which may later follow. Plaintiff brought suit asserting that defendants, rival funeral directors, sent a card to a family in which a wife lay critically ill, reading

"Bear in mind our Undertaking Department Satisfaction Guaranteed H. L. H——" (For obvious reasons name is omitted)

That is, it was claimed that defendants signed plaintiff's name to the card, with

intent to place him in such contempt as to deprive him of the confidence and patronage of the family addressed and of the people of the town generally. It is also asserted that similar cards were sent to other persons

Defendants filed a demurrer to plaintiff's suit on the ground that, even if defendants did send the cards, that gave no cause of action in plaintiff's favor; in other words, admitting, for the sake of argument, that the cards were sent, that did not amount to libel

The trial judge sustained defendants in this claim, and the suit was dismissed, but plaintiff's appeal to the Supreme Court resulted in a reversal of the judgment. The higher court holds, in effect, that if plaintiff can prove before a jury what he has alleged he will be entitled to recover damages. Holding that it is libel for a funeral director to put a rival in a false light of soliciting patronage under the circumstances above stated, the Supreme Court says:

"What, then, was the purpose in the minds of these defendants when they composed and sent these cards to the sick and dying in that community? Was it not rather, as the petitioner says, to deprive him of public confidence and esteem? Was it not rather to divert business through this means, from the plaintiff, and to injure him by such diversion?

"This man's wife was sick unto death at the time he received this card; confined in the hospital. What impression would this card make upon his mind? Would it not bring before him the spectacle of a vulture waiting to prey upon the dead? A man without sympathy for the living because he found more revenue in the dead? What is it that these defendants meant by this thing that they have done? What end had they in view? We think, surely, that which the petition charges, to-wit: to injure the plaintiff in his reputation and business, to expose him to public contempt or ridicule, to deprive him of public confidence and esteem. . . . Can the thought be entertained for a moment, that after the receipt of a card like this under these circumstances, that the receiver would patronize the sender, in the event the stricken wife had died? Was it to secure this for plaintiff that the card was sent?

"Published words which directly tend to the prejudice or injury of a person in his office, profession, or business, are actionable. . . . Any publication calculated to expose one to public hatred, contempt, or ridicule is libelous in itself. . . . The general rule is that when language is published concerning a person or his affairs, which, from its nature, necessarily must or presumably will as its natural and proximate consequence, occasion him pecuniary loss, its publication is libelous in itself. . . . Libel is an assault upon that invisible and intangible thing known as reputation."

CHAPTER XXIV

FUNERAL DIRECTORS' CODE OF ETHICS

SECTION 127 ITS RELATION TO LAW

In the next section we set forth the funeral directors' Code of Ethics, understanding that it has the sanction of the various state and national associations. At first blush, it may seem that the proper scope of this book makes it inappropriate to include any reference to obligations of the embalmer and funeral director not of a strict legal nature. But the Code of Ethics is importantly linked with legal rights and duties. For example, it will be noted that in many jurisdictions licenses may be withheld from those who have been guilty of unprofessional conduct, etc. Again, nonobservance of ethical standards might become important in determining the legality of the discharge of the manager of an undertaking company before expiration of a contract term of employment. Numerous other examples might be given, but let it suffice to say that the funeral director who does not keep himself within the Code of Ethics will do well to be constantly escorted by a lawyer if he would keep himself "within the law."

SECTION 128. CODE OF ETHICS

1. A funeral director, on entering the profession, becomes entitled to all its privileges and immunities, and he incurs an obligation to exert his best abilities to maintain its dignity and honor, exalt its standing and extend the bounds of its usefulness. He should, therefore, observe strictly such laws, as are instituted for the government of its members.

2. There is no profession from the members of which greater purity of character and a higher standard of moral excellence are required than the funeral director, and to attain such eminence is a duty every funeral director owes to his profession and to the public. It is due the latter, as without it he cannot command their respect and confidence, and to both because no scientific attainments can compensate for the want of correct moral principles. It is incumbent upon the members of the profession to be temperate in all things.

3. The nature of our calling us to the inner circle of families that are afflicted. Secrecy and delicacy, when required by peculiar circumstances, should be strictly observed and this obligation extends beyond the period of the professional services. None of the privacies or personal and domestic life should be divulged.

4. It is derogatory to the dignity of the profession to resort to public advertisements, or private cards, or use of hand bills, inviting the attention of the public to any of the wares connected with our profession. A funeral director should rely on his professional abilities and acquirements in order to merit the confidence and secure the patronage of his community.

5. No funeral director should ever interfere when another has been called to take charge of a body. Under no circumstances should one funeral director consent to take charge of a body until the one first called has been paid for his services and has withdrawn.

6. In case two funeral directors are called at the same time to take charge of the same body, both should withdraw and leave the choice to the family.

7. When a funeral director accompanies a funeral party to a distant place where burial is to take place, and a funeral director is at its destination to take charge, the attitude of the former should be that of a friend of the family, and assistant to the funeral director in charge of the interment.

8. When a funeral director assumes responsibility for the preparation and sending to him the body of a person dying at a distance, it should be regarded as a transaction of honor, the service should be performed in a professional manner and settlement made without undue delay.

9. Urging the use of temporary caskets at place of death, when satisfactory perma-

ment caskets may be obtained, with the view of profit to the funeral director where burial is to take place, is unprofessional and should be discouraged.

10. Unfavorable criticism of the service of another funeral director is unprofessional. His attention may be privately called to errors of omission or commission in a professional manner, and any suggestions offered should be given, received and treated with due professional courtesy.

11. No funeral director, in case of epidemic or contagious disease, should shirk his professional duties, even though his life may be in jeopardy.

12. There is, perhaps, no profession, after that of the sacred ministry, in which a high standard of morality is more imperative than that of a funeral director. His high moral principles are his greatest safeguard.

**DIGEST OF STATE LAWS AND REGULATIONS
AFFECTING FUNERAL DIRECTORS
AND EMBALMERS**

PART TWO

DIGEST OF STATE LAWS AND REGULATIONS AFFECTING FUNERAL DIRECTORS AND EMBALMERS

NOTE.—See names of various states in index for reference to court decisions of both general and local interest, reviewed in Part I.

ALABAMA

DEATH STATISTICS.—The provisions of the Vital Statistics Law substantially accord with the provisions set forth as a standard for comparison in the chapter on Death Statistics in Part I of this book, sections 17, 18.

EMBALMERS' LICENSES.—State Board of Embalming consists of five appointees of Governor. They must be practical and experienced embalmers. Five-year terms. To protect life and health, and to regulate the care and disposition of the dead, the board shall "prescribe a standard of efficiency as to the qualification and fitness" of those engaging in "embalming and the care and disposition of dead." Board to meet annually at least and oftener as duties may require. Must adopt regulations of practice of embalming, and "hear and try any charges against any licensed embalmer for incompetency, immorality, drunkenness or any offense involving moral turpitude, and to revoke the license of any person found guilty of such offense." Fifteen days' notice of meetings must be published in at least three different newspapers. Application for embalmer's license must be in writing, accompanied by fee of \$5. Applicant appears before board on notice. If the Board shall find upon examination that the applicant is of good moral character, and has a knowledge of the venous and arterial system, the location of the heart, lungs, stomach, bladder, womb, and other organs of the human body; the location of abdominal, pleural, and thoracic cavities; the location of carotid, brachial, radial, ulnar, femoral, and tibial arteries; the science of embalming and the care and disposition of the dead, and a reasonable knowledge of sanitation and the disinfection of dead bodies and the apartment clothing, and bedding of the deceased, in cases of death from infectious or contagious diseases, the board shall issue a license. Licenses shall be registered in the office of the Judge of Probate in the county where the licensee practices, and shall be displayed in a conspicuous place where the business is carried on. Licenses renewable annually on payment of \$2 fee to Secretary of Board. Practice by unregistered embalmer, or holding himself out as practicing, punishable by a \$50-\$100 fine. "Any licensed physician may embalm bodies in case of death outside of any incorporated municipality, having a population of 500 inhabitants, or in such municipality at any time when there is not a licensed embalmer in said municipality."

ESTATES OF DECEDENTS.—Debts against estates are to be paid in the following order: 1. The funeral expense. Law implies obligation of the administrator or executor to pay funeral expenses (72 Ala 254) Husband liable for wife's funeral expenses (53 Ala 89; 67 Ala. 40) On contest, credit for burial expenses should not be allowed on mere statement of creditor (108 Ala 209.)

INTEREST.—Legal rate, 8 per cent.

LICENSE TAXES.—Payable to state annually. "Each dealer in coffins in unincorporated places or towns of 1,000 inhabitants or less, \$10; in towns and cities of over 1,000 inhabitants and not exceeding 7,000 inhabitants, \$20; in cities over 7,000 and not exceeding 35,000 inhabitants, \$50; in cities over 35,000 inhabitants, \$100. For each embalmer, \$10. Each manufacturer of coffins, \$100."

NEGLECTED DISPOSAL OF BODY.—On complaint to a county, city or town health officer that interment or cremation of a body has been "delayed until such body has become grossly offensive, or is likely to become a source of danger to the health of others," he shall carefully investigate the facts, and if they be as alleged, he shall make affidavit thereto before the judge of probate, who shall issue a warrant to the sheriff commanding him to proceed forthwith at the expense of the estate of the deceased person, or if the body be that of a married woman, at the expense of her husband, or if the body be that of a minor, at the expense of the parents, or guardian of such minor, or if the body be that of a pauper, at the expense of the county, incorporated city, or town, in which the deceased person may be found, to cause the body to be interred or

cremated, according to the wishes of the nearest relative or relatives; and the sheriff. Sheriff may summon assistants, but if the deceased died of an infectious, etc., disease, the sheriff shall, if practicable, summon assistants who have had and recovered from the same disease. This section does not apply to a body upon which a coroner's inquest has been, or should be, ordered

BOARD OF HEALTH REGULATION—62. No unembalmed body may be held for burial, deposit in a vault, or cremation, longer than 72 hours after death

TIME LIMITS ON SUITS—Open accounts, three years; accounts stated, six years; notes, six years

June 1, 1923, Dr. H G Perry, State Registrar, wrote the author that the rules governing the transportation of bodies was undergoing revision. He added "We are at this time operating under the common-sense rules relating to the transportation of bodies . . . the underlying principle of which is that a body must be prepared so as not to be offensive to the transportation agents or those who handle it at the point of destination." See, also, section 11 in Part I of this book.

ALASKA

The Secretary of the Territory is ex-officio Registrar of Vital Statistics, and as such is authorized and directed to "provide rules and regulations for the examination and issuance of licenses to persons qualified to act as embalmers in the Territory . . . and also to issue licenses in the Territory . . . to persons duly licensed under the laws of any State . . . to act as embalmers." He is further required to provide "rules and regulations by which dead bodies may be shipped from the Territory . . . and to issue regular shipping blanks to persons licensed to act as embalmers."

Funeral bills have priority over other claims against estates

Legal interest rate is 8 per cent. Suits on accounts or notes may be brought within six years after maturity.

ARIZONA

BURIAL REGULATIONS.—No person shall allow to be unburied a body longer than four days, or, when death has been caused by infectious or contagious disease, a longer time than 24 hours after death without a permit from the local board of health, which shall specify how long the body may be unburied. Where death has been caused by an infectious or contagious disease, the body shall, if directed by the Board, be immediately disinfected as may be directed. If the body remains unburied more than 24 hours, it shall be immediately enclosed in a tightly sealed metallic coffin, which shall not thereafter be opened, and the funeral of such person shall be strictly private.

"In the removal of such body for burial or otherwise, only such hearses or other vehicles shall be employed as may be authorized by the Board, and no undertaker or other person shall bury or prepare for burial a body without a certificate signed by the attending physician or the coroner, which certificate shall state the name, age, sex and place of abode, and date of death of such diseased person, the name and duration of the disease of which such person died, and whether or not the disease is contagious, and such certificate shall, after the burial of such body, be filed with the local Board of Health, and whenever any such dead body shall be presented to any common carrier within the state for transportation by such carrier, it shall be accompanied by a duplicate of such certificate signed by such attending physician or coroner, and no common carrier shall receive any such body for transportation unless such certificate shall state the disease of which such person died is not contagious, which duplicate shall be securely attached to and remain upon the outside of the coffin or other receptacle containing such dead body"

Violations of public health law or local regulation or order punishable by a fine of from \$10 to \$50, or by imprisonment for not more than 30 days, or both such fine and imprisonment

DEATH STATISTICS—Law substantially follows standard form as set forth in the chapter on Death Statistics in Part I of this book, sections 17, 18.

Funeral directors and others may be required to furnish information they have regarding death upon demand of the state registrar, in person, by mail, or through the local county registrar. (Sec 4422) Local registrars bound to supply blank certificates to such persons as require them. Attending physician refusing to furnish death certificate punishable by fine of from \$5 to \$50. "Undertaker, or one acting as such," who interrs, removes, or otherwise disposes of body without burial or removal permit punishable by fine of from \$25 to \$100. Other penalties are provided for violations of act by other persons and transportation companies

DUTY TO BURY, ATTACHMENT OF BODIES—Duty to bury rests (1) on husband or wife; (2) if decedent not married, on nearest adult kin; (3) if no husband,

wife or kinsman, on the coroner, if inquest is held, or the poor authorities, if no inquest. Tenant or owner of premises bound to bury if others omit to perform the duty. One failing to perform duty liable in treble damages to one performing in his stead. Misdemeanor to attach body or hold it under claimed lien.

EMBALMERS' LICENSES—State Board of Embalming consists of three members appointed by the Governor, serving rotating terms of two years. They "shall be practical embalmers, having experience in said business and the care and disposition of dead human bodies," and are removable by the Governor "for neglect of duty, incompetency, or improper conduct." The Board is empowered and required "to prescribe a standard of efficiency . . . of those engaged and who may engage" in embalming; and to meet at least once a year and oftener if its duties so require. At least fifteen days' notice of meetings shall be given to every funeral director and embalmer engaged in business in the state. Two members constitute quorum. Power to regulate practice of embalming. Unlicensed persons desiring to engage in embalming must be examined by Board "and show that they are duly qualified in the art of embalming and sanitary science." Written application required, to be accompanied by \$5 license fee. "If the Board shall find, upon due examination, that the applicant is of good moral character, possessed of the requisite skill and knowledge of the science and practice of embalming and of the care and disposition of the dead, and has reasonable knowledge of sanitation and the disinfection of bodies . . . and the apartment, clothing and bedding in case of death from infectious and contagious diseases; the Board shall thereupon issue . . . a license . . . and shall register such applicant as a duly licensed embalmer." Embalmer must register license with Board of Health of the city, or with the clerk of the town, in which he engages in practice, or with the Clerk of the County Board of Supervisors if he practices outside a city or town. License must be kept conspicuously posted in place of business. Licenses expire June 30 and are renewable annually in June on paying \$2 fee. Licenses revocable for violation of law or regulation of Board "for the preparation, embalming, shipping or burial of any dead human body." "Unlawful for any person not a registered embalmer to embalm or pretend to practice." Act inapplicable to those "engaged simply in the furnishing of burial receptacles." Violation of act punishable by a fine of from \$50 to \$100 (Act March 23, 1909.)

Regulations of the Board make the following additional requirements: Application for license to be on blanks furnished by Board. Applicant must be at least 21 years old and pass examination in anatomy; sanitary science; care, preservation, embalming, transportation and burial; and practical operation on cadaver. Seventy-five per cent of questions must be satisfactorily answered. Licenses not issued or renewed to those "who have, by false and fraudulent representations, obtained or sought to obtain practice in their profession, or by false or fraudulent representation of their profession have obtained or sought to obtain money or anything of value or for any other unprofessional or disorderly conduct," or who have willfully violated the rules of the Board. Willful violation of rules for transportation of dead justifies refusal of license or renewal. Willful violation for licensed embalmer to sign certificate attesting preparation of body not prepared by him or under his direction by licensed embalmer. Record of names and addresses of all licensed persons to be kept by Board and copy furnished to each person licensed. No temporary licenses pending examination issued. Care and preparation of body must be private. No one to be allowed in embalming room, except licensed embalmers and assistants until body is fully prepared and dressed, except by permission of immediate family. Violation of this rule ground for revoking license.

ESTATES OF DECEDENTS—Funeral expense claims have priority over other claims.

HOSPITAL REGULATIONS—Offense punishable by fine of not more than \$100, for superintendent of hospital, etc., to deliver body to funeral director, other than one designated by family, relative or friends of decedent, if such family, etc., be known. Superintendent must immediately notify family, relative, friend or person known to be interested when death occurs and not permit removal until they designate undertaker. (Laws 1921, pp 420, 421.)

INTEREST—Legal rate, 6 per cent.

TIME LIMITS FOR SUITS—Accounts, three years; notes, six years.

TRANSPORTATION RULES—See section 11 in Part I of this book.

ARKANSAS

CLAIMS AGAINST ESTATES—Funeral expense claims are preferred over claims in general.

DEATH STATISTICS—Rules and Regulations of the Arkansas Board of Health

(Oct., 1922) contain following provisions, the numbers referring to paragraphs of such Rules and Regulations.

466 Local registrar to furnish blank certificates. Certificates must be complete.
473 Funeral director must register name, address and occupation with local registrar.
475 Adopts standard form of death certificate (See chapter on Death Statistics in Part I, section 18.)
476-481 Provide for making death certificates where there have been no attending physicians, for filling and filing certificates, for records of casket sales, and for issuance of burial permits, etc., in substantially same form as that set forth in our chapter on Death Statistics, section 17.

EMBALMERS' LICENSES.—State Board of Embalmers consists of five appointees of the Governor serving rotating four-year terms. Three members must be "practical and practicing embalmers," being residents and having at least five years' experience in the practice of embalming and disposition of the dead. Members removable by Governor for neglect of duty, incompetency or improper conduct. Meetings to examine applicants at least annually, and oftener if duties so require, on at least 30 days' notice. Application for license must be in writing and accompanied by \$10 fee. Applicant must pass an examination in anatomy and physiology of the circulatory system and the various cavities of the body and of the fundamental principles of sanitary science and bacteriology, and show his proficiency in practical embalming, disinfection and the proper care of the dead. License must be registered with local Board of Health where business is conducted, and conspicuously posted in the place of such business. Licenses revocable for violation of provisions of the act, rules or regulations, or on conviction of continued improper conduct. Licenses are not assignable. Renewal licenses issued annually for \$2 fee. Board may recognize licenses issued to embalmers by other states having practically equivalent requirements.

Rules and regulations of the Board provide for applications on blanks furnished by the Secretary, showing name, age, residence, time engaged in embalming or in receiving practical instruction under licensed embalmer, with name or names of such embalmers. Application must be sworn to and may be sent to Secretary any time, but should be in his hands ten days before examination meeting. If applicant is under 21 years old or otherwise unqualified for examination, application and fee is returned. Two examinations held each year. Notice of meetings to be published in two trade journals thirty days before meeting. Board may defer examination if application not filed before date set for examinations. Applicant failing to appear may appear at next examination, but on failure to appear at next examination he shall not be entitled to further consideration. Applicant failing to pass examination is not entitled to return of fee, but may be re-examined without further fee by presenting himself within two years.

Applicant must be at least 21 years of age, of good moral character, and recommended by two licensed embalmers of Arkansas. He must pass a practical examination upon a cadaver and have had two years' practical experience under a licensed embalmer, provided that but one year is necessary if applicant has completed a 26 weeks' course in a recognized school of embalming certified to by the president or dean. Examination must be passed with a score of at least 75 per cent on at least 50 questions covering anatomy of the principal organs of the body, cavities, arterial and venous system, blood and discolorations, arterial and cavity embalming, transportation laws and rules, bacterial and disinfection; and on at least 25 questions covering embalming in special cases, contagious and infectious diseases, and shipment of bodies.

One licensed in another state may be licensed without examination in Arkansas by applying with \$10 fee, certificate from such other state, and the endorsement of two licensed Arkansas embalmers. But the standard of requirements of the other state must be as high as those of Arkansas.

Licenses expire Dec. 31 and must be renewed annually on application made at least 30 days preceding expiration, on blanks prescribed by Board. Embalmer failing to renew his license may do so within six months. If more than six months have elapsed he may be reinstated by paying renewal license fee for each year since license expired, on showing that he has practiced in another state or under a licensed embalmer. Otherwise new examination must be taken.

No right to practice pending renewal of license. Unlicensed person shall not practice unless a licensed embalmer is present during entire operation, which must be under the latter's direction.

"Embalming" means to disinfect or preserve body, entire or in part, by use of chemicals, fluids or gases ordinarily used, by outward application, vascular or hypodermic injection, or direct application into organs or cavities. Use of such chemicals by unlicensed person prima facie evidence of violation.

Licenses must be registered with Board of Health of city where embalmer prac-

tices, or, where there is no such board, with the clerk of the town or of the County Court. It must be conspicuously posted in place of business.

HEALTH REGULATIONS—There shall be no church funeral of any person who has died of Asiatic cholera, acute anterior poliomyelitis, epidemic cerebrospinal meningitis, diphtheria, plague, scarlet fever, smallpox or typhus fever, and only adult relatives and necessary attendants shall be allowed to participate in the brief service. The public notice of death of a person dying from one of the diseases enumerated in this paragraph shall state the name of the disease which caused the death.

No other persons than licensed physicians, "undertakers" or nurses in attendance, may enter or leave any house or building infected with any communicable disease subject to quarantine or isolation, without first procuring permission from the health officer having jurisdiction, and obeying absolutely his directions as to all sanitary precautions which he orders.

INTEREST—Legal rate, six percent.

JURY SERVICE—On showing license may be excused from service as grand or petit juror.

TIME LIMIT FOR SUITS—Accounts, three years, notes, five years.

TRANSPORTATION REGULATIONS—Under no circumstances shall a corpse be received for transportation unless accompanied by transit and removal permits. The transit permit shall contain the undertaker's certificate that the body has been prepared for burial and shipment in accordance with the rules of the State Board of Health, nor should it be received with such certificate if fluids or offensive odors are escaping from the case. One full first-class limited or unlimited ticket will be required for the transportation of a corpse without regard to the age of the deceased, and the word "Corpse" must be plainly written on the face of a local, and on each coupon of a coupon ticket. The corpse will not be taken for transportation unless a passenger is in charge.

For reference to additional local regulations, see section 11 in Part I of this book.

CALIFORNIA

CLAIMS AGAINST ESTATES—Funeral expenses claims are preferred over claims in general.

CONTAGIOUS DISEASE REGULATIONS—"The body of any person who shall have died of any contagious, infectious or epidemic disease, so classed by the state board of health, shall be thoroughly disinfected and embalmed and enclosed in a burial case, and such case shall not again be opened, after such body has been placed therein; *provided, however*, that when such body is to be kept for a period longer than twenty-four hours such body shall be thoroughly embalmed and enclosed in a casket or box, hermetically sealed.

"Funerals must be conducted privately and advertised as such in order to prevent the gathering of any large number of people.

"Remains should be removed from hospitals, public institutions or homes directly to the undertaking parlors. In no instance should undertakers encourage the assembling of any large gathering of people in the parlors during times of epidemics.

"Interments or cremations must take place within the shortest period of time after all arrangements for funerals have been completed. In no instance must this be more than forty-eight hours after death except by special permission of the health department.

"No services of a public character, including church or fraternal orders, will be permitted without permission from the board of health, the object of this rule being to prevent the gathering or assembling of crowds."

("Laws, Rules and Regulations of State Board of Embalmers," pp. 16, 17.)

See, also Transportation Regulations.

DEATH STATISTICS—"Section 5. The body of any person whose death occurs in this state, or which shall be found dead therein or which shall be brought in from outside the state, shall not be interred, deposited in a vault or tomb, cremated, disinterred or otherwise disposed of, or removed from or into any registration district, or to be temporarily held pending further disposition more than five days after death, unless a permit for burial, removal, or other disposition thereof shall have been properly issued by the local registrar of the registration district in which the death occurred or the body was found, or by the county recorder of the county where said district is located, and it shall be the duty of said county recorder to mail within twenty-four hours the original death certificate to said local registrar; *provided*, that nothing in this act shall be construed to prevent an undertaker from removing a body from the registration district where the death occurred or the body was found to another registration district in the same or an adjoining county in an undertaker's conveyance for the purpose of preparing said body for burial or shipment. A removal permit must be secured within

forty-eight hours and before embalming body No body where death occurred from any disease held by the state board of health to be infectious, contagious or communicable and dangerous to the public health shall be removed without first securing a removal permit in the manner provided in section nineteen of this act And no such burial or removal permit shall be issued by any registrar until, wherever practicable, a complete and satisfactory certificate of death has been filed with him as hereinafter provided; *provided*, that when a dead body is transported from outside the state into a registration district in California for burial, the transit or removal permit issued in accordance with the law and health regulations of the place where the death occurred, shall be accepted by the local registrar of the district into which the body has been transported for burial or other disposition, as a basis upon which he may issue a local burial permit, noting upon the face of the burial permit the fact that it was a body shipped in for interment, and giving the actual place of death; and no local registrar shall receive any fee for the issuance of burial or removal permits under this act other than the compensation provided in section twenty" (Vital Statistics Registration Law, as amended, 1919.)

Section 7 provides for death certificate in the standard form set forth in the chapter in Part I of this book on Death Statistics, section 18.

Sections 8 and 9 are substantially the same as paragraphs 4, 5 and 6 of the standard form of the vital statistics law set forth in the chapter of this book above referred to. These provisions relate to the undertaker's duties as to the certificate of death, etc. See section 17 of this book.

"Section 10 The removal of a dead body from one registration district to another must be accompanied by a yellow transit paster prepared according to a form prescribed by the state board of embalmers and approved by the state board of health" (As amended, 1919)

Section 11 is substantially the same as paragraph 8 of the standard form of law set forth in the chapter on Death Statistics in Part I of this book.

EMBALMERS' LICENSES—State Board of Embalmers consists of five appointees of Governor, holding for four-year terms. Members must have at least five years' experience in embalming, etc., and are removable for incompetency or improper conduct. Actual mileage and expenses are allowed, but no salary excepting to secretary (\$900 per year). Examinations held annually in Los Angeles, San Francisco and Sacramento, and board may conduct examinations elsewhere. Two weeks' notice to be published in newspapers. Three members of board, quorum

Embalmers practicing before Jan 1, 1916, were permitted to be licensed by application stating possession of skill and knowledge, etc. After that date persons applying must be examined, \$10 fee required, \$5 being refunded on applicant failing to qualify. Licenses must be registered with local board of health and be conspicuously displayed in embalmer's office. License records of Board of Embalmers open to public inspection. Board must recognize licenses issued by other states, and may adopt rules. Licenses renewable on paying \$2 fee. Not more than one person may practice under single license, which is non-transferable. Licenses revocable for violation of law or regulations or for continued improper conduct, subject to review in the courts. One who holds himself out or practices as embalmer without license subject to fine \$50-\$100. Railroad company receiving body from unlicensed embalmers subject to fine \$100-\$500. Non-residents living along border and doing business in state may be specially licensed by complying with rules and regulations, furnishing certificate showing license from own state and paying a \$20 fee and a yearly renewal fee of \$5. Lapsed licenses renewable within two years by paying \$2 and back dues.

Under rules of the board, applicant must be more than 21 years old and apply on blanks furnished by secretary. Application may be filed any time, but should be filed at least 30 days before the meeting at which examination is desired. When applications are filed in due time board may examine other applicants at same time. No private examinations. Applicant failing to appear may appear at next examination without further fee, but failure to appear then forfeits right to further consideration. Licenses may be denied or revoked for false statements in applying therefor, one-half of fee being returned. Annual renewal fees payable before Dec 31. Applicants must pass examination with average grade of 75 per cent. No duplicates of license number issued within three years on number becoming vacant. No temporary license pending examination. Applicant must have had at least two years' experience and have embalmed at least 50 bodies. Applicants for training under licensed embalmers must immediately notify secretary of board, to receive credit for time spent. Employer must inform secretary when applicant received and when he left employment.

EMBALMING FLUIDS.—"It is prohibited to manufacture, sell or distribute embalming fluids within the state containing mineral poison. All fluid containers to have

printed on the label 'no mineral poison.' All manufacturers and distributors of embalming fluids are hereby required to state the per cent formaldehyde contained therein, upon the label

"All embalming fluids sold, offered for sale, or used in embalming, shall have the per cent of formaldehyde gas as contained in the original package, and also the per cent of formaldehyde gas as used according to directions, plainly and correctly stated on the label upon the container"

EMBALMING REGULATIONS.—"It shall be unlawful to embalm a dead human body when a fact within the knowledge, or brought to the knowledge of the embalmer is sufficient to arouse suspicion of crime in connection with the cause of the deceased, until permission of the coroner or justice of the peace (if there be no coroner) has first been obtained. Any person violating the provisions of this section shall be deemed guilty of a misdemeanor, and, upon conviction thereof shall be fined not less than twenty-five dollars, nor more than one hundred dollars

"No person shall embalm a body of any person who has died from an unknown cause, except with the written permission of the local health officer

"No person shall embalm a dead body of a human being unless he or she be a licensed embalmer, and said embalmer shall first ascertain whether or not there be any cause for investigation of the death by the coroner or the health officer. If there should be, the embalmer should at once notify the proper authorities

"No undertaker shall keep or expose, or cause or permit to be kept or exposed, the dead body of a human being over a period of twenty-four hours without having been embalmed; *provided, however*, that this section shall not apply to bodies while the same are being retained in a public morgue, or other place for official investigation."

Special rule regulating all mortuaries, funeral homes and undertaking establishments in the state of California

"1. The care and preparation of all persons dead of any cause shall be entirely private and no one shall be allowed in the embalming room except the licensed embalmers and their assistants until the body is fully prepared and dressed except by permission of the immediate family

"2. The secretary of the State Board of Embalmers shall have prepared suitable placards for framing setting forth this rule. These placards shall be furnished by the secretary of the State Board of Embalmers to all undertakers. The undertaker shall have them framed and permanently fastened to all doors of the preparation or embalming rooms. There shall also be one of these framed placards on display in the general office of every undertaking establishment in the state of California

"3. Any embalmer failing to comply with the provisions of this rule shall have his license revoked"

Whenever a written complaint of a licensed embalmer is filed with the board, substantiated by affidavit, charging the holder of a license with the violation of the law, rules or regulations pertaining to embalming, it shall be the duty of the board to notify the person in question, either by registered mail, or in person, and a copy of such charges shall be included in such notice

The said board shall in such notice definitely fix a time and place where it will be in session for the purpose of considering such case. Such person shall have the right to appear before the board at this meeting with such witnesses as he or she may require, and, after a statement of facts, the board shall have the right to revoke such license if in its judgment it decides to do so. The board may, in its discretion, prosecute, or cause to be prosecuted in the courts of the state, any person whom it may believe to be guilty of any violation of any of the provisions of the law relating to the practice of embalming.

INTEREST—Legal rate, seven per cent

OFFENSES AGAINST BODIES, ETC—Husband primarily bound to bury wife. Kindred of unmarried woman must bury her. If no kindred, coroner or poor authorities. If those so bound omit burial within reasonable time, tenant or owner of premises where death occurred bound. Violation of duty a misdemeanor and subjects offender to treble damages to person performing duty. Attaching body or holding under lien claim is a misdemeanor. Burial in unauthorized place a misdemeanor.

SAN FRANCISCO.—Permits for burial and disinterments specially provided for.

SCHOOLS OF EMBALMING—The state board of embalmers and schools for teaching embalming shall have extended to them the same privileges as to the use of bodies for dissecting, demonstrating of teaching, as those granted in this state to medical colleges.

The state board of embalmers is authorized to enter into an agreement with the proper authorities for the purpose of establishing a school of embalming in connection with any state educational institution of university grade or school of secondary grade

maintained by a city, city and county, or school district in this state for the purpose of instructing students in the art of embalming and the sanitary care of the dead. The board shall be empowered to employ instructors; secure paraphernalia, lay out a course of instruction and requirements for a graduation, to require fees for same; which said fees shall be deposited in the state treasury in a fund which is hereby created and which shall be known as the embalmers school fund; this school to be in no way an expense to the state. Upon graduation a diploma thereupon shall entitle the holder to be admitted to practice within the state.

TIME LIMITS FOR SUITS—Accounts, four years; notes, four years.

TRANSPORTATION RULES—See section 11 in Part I of this book

COLORADO

CLAIMS AGAINST ESTATES—Funeral bills rank after claims on account of funds held by decedent as executor, etc., and expenses of administration

DEATH STATISTICS—State Board of Health empowered to make proper rules. Burial or removal permit must be obtained from local registrar, after furnishing death certificate or transit permit. Death certificates to be made on blanks furnished by state registrar. "Undertakers" must register with local registrars.

When death occurs without medical attendance, "undertaker" must immediately notify local registrar, who must immediately notify the local health officer and the coroner. The body should not be removed from the place where it is found without permission of the coroner, nor be embalmed without consent of the coroner. The coroner must immediately investigate and hold an inquest when necessary to determine the facts required by law. A certificate of death occurring without medical attendance must be signed by the coroner who shall furnish such information as may be required by the state registrar properly to classify the death.

When a death results from an injury or accident within three months following date of such injury or accident, the coroner of the county where the death occurs must be notified before the body of the deceased is moved or prepared for burial.

The "undertaker," or person acting as such or person or firm furnishing the box, coffin or casket in which to bury a human body shall be held responsible for obtaining and filing the certificate of death with the local registrar, and securing a burial or removal permit, prior to any disposition of the body. In case of death of any person whose identity is uncertain or whose name cannot be learned prior to burial or other disposition of the body, the "undertaker" must file with the death certificate a detailed description of the deceased, including approximate weight, height, age, sex, race, color of hair and eyes, clothing and any scars, deformity or other distinguishing marks which might aid in a later identification. If possible the "undertaker" must also file with the death certificate of an unidentified person, a photograph, preferably taken of the deceased before death.

The local registrar shall refuse to issue a burial or removal permit when the death certificate does not contain the essential information required by law or when he believes the case should be investigated by the coroner.

The "undertaker" must deliver the burial permit to the sexton or person in charge of the place of burial before interring the body; or shall attach the transit permit containing the removal permit, to the box containing the corpse, when shipped by a transportation company. If the destination is within the state of Colorado, the local registrar where interment is to be made shall take up the transit and removal permit and issue a burial permit.

If the interment or other disposition of the body is to be made within this state, the wording of the burial permit may be limited to a very brief statement by the local registrar as detailed upon the form prescribed by the state registrar.

Violation of these provisions constitutes a misdemeanor.

EMBALMERS' LICENSES—State Board of Embalming Examiners composed of five members appointed by Governor, four of whom must have had at least five years' experience and be selected from a list of names submitted by the State Funeral Directors' Association. The fifth member must be a physician and the secretary of the State Board of Health. The four members hold office for rotating four-year terms. Three members constitute quorum. Secretary must keep record of names and addresses of all registered embalmers. The record is open to public examination and copies are to be furnished to all registered embalmers. Board enjoys same privileges as medical colleges as to use of bodies for practical examination.

Board must meet at least once a year at the state capitol to examine applicants for registration. Applicant must deposit a registration fee of \$10. The examination tests fitness of applicant to practice embalming. Board shall prepare questions pertaining to embalming, sanitation and disinfection of bodies of deceased persons, and the

apartments, bedding and clothing in case of death from infectious or contagious disease, and upon such other questions as they shall deem proper, and which shall tend to prove the ability of the applicant to practice embalming. Any person holding a license as an embalmer from any other state, who shall satisfy the Board that he or she is competent to practice embalming may, on payment of a \$10 fee, be registered without examination, but in case of any doubt upon the part of said Board an examination shall be had. Licenses must be recorded with the county clerk and recorder where the licensee is to practice embalming. On receiving certificate one shall be known as a "Registered Embalmer." Licenses not assignable, "and no more than one person, firm or corporation shall carry on said business under one license." Licenses revocable by unanimous vote of Board "for gross incompetency, dishonesty, habitual intemperance, or any act derogatory to the morals or standing of the practice of embalming." Thirty days' notice of the time and place for hearing charges must be given. Prohibition against practice without license exempts licensed physicians and surgeon, and persons "engaged simply in the furnishing of burial receptacles for the dead, burying of the dead, and conduct of funerals." Violations of the act constitute a misdemeanor punishable by a fine of not more than \$300.

BOARD REGULATIONS—Application for embalmer's license to be in writing on blank furnished by secretary, and must give applicant's full name, age, residence, time engaged in practice or practical instruction under registered embalmer. Applications must be sworn to and may be filed any time. If application shows that applicant is not at least 21 years old, or has not practiced embalming for at least two years, or has not had at least two years' practical instruction in embalming and disinfecting under a registered embalmer, applicant shall not be entitled to an examination, but shall be entitled to a return of his license fee and application.

Examinations held at semi-annual meetings of board in August and January, and at such other meetings as may be specially called. One month's notice of meetings given in "public press." Examinations may be deferred on applications not filed ten days before meeting. Applicant failing to appear may appear at next examination without further payment, but further failure to appear deprives him of right to further consideration.

Applicants must pass a practical examination upon a cadaver, and upon not less than 50 written questions, covering anatomy of principal organs (10 questions), cavities (5 questions), arterial and venous system (10 questions), blood and discoloration (5 questions), arterial and cavity embalming (10 questions), bacteria and disinfection (6 questions), and transportation rules (4 questions), and an oral examination of not less than twenty-five questions on embalming, 15, communicable diseases, 4; disinfection, 6; funeral direction and ethics of the undertaking profession, 5. Applicant must attain a grade of at least 75 per cent.

One holding license in another state must make written application for license, accompanied by \$10 fee and one year's dues, and certified copy of his certificate issued by such other state. Board may issue license to him, provided requirements of such other state are as high as those of Colorado.

Licenses must be renewed annually, expiring December 31. Renewal fee, \$2. In applying for renewal, applicant must list his unlicensed assistants, giving time served by each during the preceding year. Registered embalmers may be reinstated on failure to renew, if not more than ninety days shall have passed since failure to renew, but they must take out new license and pay \$10 fee and may be required to pass a new examination.

Unlicensed assistants must register with the Board on cards provided by it.

Pending a renewal of license, no registered embalmer shall practice embalming. An employe, student, apprentice, helper, "undertaker," funeral director, or any other person not the holder of a license, shall not attempt to practice embalming, unless a duly registered embalmer is actually present during the entire operation, and the embalming is done under such registered embalmer's personal direction and supervision.

Any person, not a holder of a license, embalming or attempting to embalm a dead human body, except under the immediate and personal direction of a registered embalmer, shall be considered to be practicing embalming. "Embalming" is given the same definition as set forth in the chapter on Licensing of Embalmers and Undertakers in Part I of this book.

An undertaker who has had two years' practical instruction, or in assisting, in embalming and disinfecting under a registered embalmer shall be deemed to have had practical experience or instruction under these rules. Licenses must be conspicuously displayed in place of business, as well as recorded with the county clerk and recorder.

Licenses revocable for lack of good moral character, gross or willful malpractice as embalmer, violation of law or regulation governing the disposition of bodies, falsely

certifying to embalmed or prepared body, gross or willful neglect in conduct of profession, knowingly false statements in application for examination, etc.

No temporary licenses shall be issued.

INTEREST.—Legal rate, 8 per cent.

MISCELLANEOUS PROVISIONS.—“Section 10. It shall be unlawful for any person to embalm a dead human body when any fact within the knowledge, or brought to the attention of the embalmer, is sufficient to arouse a suspicion of crime in connection with the cause of the death of the deceased, until the permission of the coroner, deputy coroner, or justice of peace (if there be no coroner), has first been obtained, provided such permission can be obtained within twenty-four hours from time of death”

TIME LIMITS ON SUITS—Accounts, 6 years; notes, 6 years.

TRANSPORTATION RULES—See section 11 in Part I of this book.

CONNECTICUT

CLAIMS AGAINST ESTATES—Funeral expense claims and administration expenses take precedence over other claims. Statute provides that in certain cases where one dies leaving a bank deposit or funeral benefit insurance, amounting to no more than \$300, the funeral director burying the decedent shall be entitled on making proper affidavit to receive from the bank or insurer the amount of his claim, without administration proceedings.

DEATH STATISTICS—A statute provides for making death certificates by attending physicians and medical examiners as a basis for burial permits. Further provision is made as follows: “The undertaker or person in charge of the burial of the deceased person shall make out a certificate upon a blank furnished by the State Department of Health stating the full name of the deceased, the date of death, the place of death, including street, number and ward, if any, the number of families in the house, if tenement; residence at time of death, occupation; condition, single, married, divorced or widowed; and if a wife or widow, of whom; date of birth; sex, color; birthplace; father's name in full, father's birthplace; mother's full maiden name; mother's birthplace; place of burial, from whom he received the information, whether or not the body was embalmed, and if so, the name of the embalmer and the number of his license, which certificate shall be signed by such undertaker. When any person shall have died from any communicable disease named in the sanitary code, no person except a duly licensed embalmer shall have charge of such body and only a licensed embalmer shall sign the undertaker's certificate required by this act. Such licensed embalmer shall also give to such registrar a certificate signed and sworn to by himself or some other licensed embalmer stating that the body has been disinfected in accordance with the method prescribed and in force at the time of death by the State Department of Health, or inclosed in an airtight coffin or case, hermetically sealed. No burial permit shall be issued in any such case upon a certificate not so signed by a licensed embalmer. Any person who shall violate any provision of this act or who shall knowingly sign a false certificate, shall be fined not more than \$25.”

Burial in town of death forbidden until a burial permit, stating the place of burial and that certificate of death has been recorded, issued. Disinterment permits also required. No person shall remove a body from or into the limits of a town unless there is attached to the coffin or case a written or printed permit signed by the Registrar of Deaths of the town where death occurred, certifying the cause of death, and certifying, in case of cholera, yellow fever, diphtheria, membranous croup, typhus fever, typhoid fever, scarlet fever, measles, leprosy, smallpox or other pestilential disease, that the body is enclosed in an airtight coffin or case, hermetically sealed, and has been disinfected as required by State Department of Health. Such permit obviates necessity for permit from registrar in town where burial occurs. If body brought into state for burial is accompanied by a removal permit issued by the authorities of the state from which the body is brought, the permit shall be sufficient authority for burial; otherwise permit must be obtained from the registrar of the town where burial is to occur.

EMBALMERS' LICENSES AND REGULATIONS—Board of Examiners of Embalmers consists of five members appointed by the Governor. Members must be practical, arterial embalmers with at least five years' practice in the state. Rotating terms of three years each. Members entitled to \$5 for each day's attendance at sessions of the Board, the secretary receiving additional compensation of \$200 a year. Actual traveling and other necessary expenses allowed. Board must meet at least once a year and at such other times as duties shall require.

Practice of embalming by unlicensed persons forbidden. Applicant for a license must pay a \$10 fee and be examined upon embalming, sanitation, disinfecting, signs of

death and the manner in which death may be determined. Examinations are in writing with actual demonstration on cadaver when one is obtainable.

Licenses expire June 30th annually, and are renewable on payment of a \$5 fee and on application within thirty days before expiration of old license. State Department of Health appoints examiner to act with Board of Examiners in conducting examinations on questions selected by the Department from a list of questions submitted by the Board of Examiners, and upon such other questions as the department may deem proper. Licenses are non-assignable and must be displayed conspicuously in the holder's office or place of business. The name and residence of every person to whom a license is issued must be reported to the State Department of Health, and the Board of Examiners must annually furnish to the Clerk or Registrar of Vital Statistics of each town a printed list of all licensed embalmers.

No licensed embalmer shall certify to the preparation or embalming of any body not prepared or embalmed by him.

A body dead from a sudden, violent or untimely cause, or a body found dead from unknown cause shall not be embalmed until permission has been obtained from the coroner or the medical examiner of the town in which the body lies. Violations of the act are punishable by a fine of not more than \$500 for each offense.

BOARD RULES.—All applications for license must be signed and sworn to. The applicant must be recommended by two responsible persons who shall state that he is of good moral character, can read and write in the English language, and has had a common school education. If he fails to pass he may take any examination given within one year by the Board without further payment, but in no case shall the fee be returned after he has taken an examination. Applicants who have paid the fee of \$10 shall be examined in the following manner: A list containing 20 questions shall be given each applicant who shall answer same in writing on paper furnished by the Board. Each applicant shall be examined by the Board as to his practical knowledge, when possible upon a cadaver. The average of the written and practical examinations must be at least 75 per cent to entitle applicant to a license. Before granting a license it shall be necessary for the applicant to prove that he is at least 21 years of age; that he has had at least two years' experience in embalming, and during that time has embalmed under the supervision of a licensed embalmer at least 25 human bodies. Applicant may reduce the two years' actual experience in the following manner: If he has graduated from the eighth grade of a public, private or parochial school or from a four weeks' course in an approved embalming school or college, the same may be considered equal to two months' experience. If he has graduated from a high school or from an eight weeks' course in an approved embalming school or college, the same may be considered equal to six months' experience. If he has graduated from an approved college or from a thirteen weeks' course in an approved embalming school or college the same may be considered equal to twelve months' experience. If he has graduated from a medical college or a twenty-six weeks' course in an approved embalming school or college the same may be considered equal to eighteen months' experience. The Board may refuse to either issue or renew a license to any person who has by false or fraudulent representation obtained or sought to obtain practice in his profession, or who is guilty of unprofessional or dishonorable conduct, or of wilful violation of the rules of this Board or the rules of the State Department of Health. The Board may revoke any license issued for the above or other justifiable cause, on a reasonable notice of the charge against him and an opportunity for a full hearing before the Board. The Board shall hold meetings for examination of applicants for license during the months of March, June, September and December, the exact date to be at the discretion of the president.

EMBALMING FLUIDS.—Use of any fluid or substance containing arsenic in any form in embalming is punishable by \$100-\$500 fine.

HEALTH REGULATIONS.—Within twelve hours after being called to take charge of a body dead of a communicable disease, the "undertaker" shall report the case to the local health officer, and he shall prepare such body for burial in accordance with the regulations of the state department of health.

Regulation 190. All regulations heretofore adopted by the state department of health relating to the preparation, removal and burial of dead human bodies are hereby repealed, except Regulations 44 and 45 of the Sanitary Code.

Regulation 191. The intent and meaning of certain words and phrases as used in Regulations 192 and 193 are as follows:

Washed.—A dead human body shall be considered as washed when the entire surface of the body and all orifices have been thoroughly saturated and cleansed with a disinfecting solution and the orifices have been sealed with cotton or gauze.

Embalmed.—A body shall be considered as embalmed when it has had injected into

the circulatory system embalming fluid in an amount not less than 5 per cent of the body weight and when such cavities have been injected as may be necessary to properly preserve the body and render it sanitary.

Wrapped.—A body shall be considered as wrapped when it shall have been bandaged with five thicknesses of cloth saturated with a disinfecting solution; provided, that when a body has been embalmed, the face, arms and hands need not be so bandaged.

Embalming Fluid.—An embalming fluid shall be a fluid representing not less than 4 per cent formaldehyde gas or such other fluid as may be approved by the Commissioner of Health in writing.

Disinfecting Solution.—A disinfecting solution shall be an improved embalming fluid, a 1-20 solution of carbolic acid, a 1-500 solution of bichloride of mercury or such other solution as may be approved by the Commissioner of Health in writing.

Regulation 192 (a) A body dead of a disease not communicable shall be prepared for burial by being washed; provided, if such body is to be transported by common carrier it shall also be embalmed.

(b) A body dead of a communicable disease, as declared by Regulation 3 of the Sanitary Code, shall be prepared for burial by being washed and wrapped or washed and embalmed; provided, if such body is to be transported by a common carrier, it must be washed and embalmed, unless the body is dead of anthrax, cholera, diphtheria, glanders, plague, smallpox, typhus fever or yellow fever, when it must be wrapped and enclosed in an hermetically sealed casket or box.

(c) A body dead of a communicable disease other than tuberculosis, pneumonia, dysentery, chicken-pox, mumps, whooping cough, influenza or syphilis, if it be removed to another town in the state by a conveyance other than a common carrier, shall be taken directly to the place of burial unless enclosed in an hermetically sealed casket or box; provided, the health officer of the town where burial is to be made may grant in writing the privileges authorized in Regulation 45 of the Sanitary Code.

Regulation 193 (a) No body dead of communicable disease shall be prepared for transportation or burial by any person other than a licensed embalmer.

(b) Any person who shall prepare or assist in the preparation of a body dead of a communicable disease shall take the necessary precautions to prevent the spread of infection; and such person shall not remove or permit the removal of any infectious material, clothing, instrument or thing until thoroughly disinfected by combustion, by boiling for at least one hour, or by thorough saturation or immersion in a disinfecting solution for at least two hours.

Regulation 194 Transit permits as required by Section 339 of the General Statutes shall be secured in duplicate, one copy being designated as a transit paster to be attached to the coffin or casket. Information for transit permits, other than what is contained in the death certificate, shall be supplied to the registrar in writing.

Regulation 195. The placing of a body in a receiving vault shall be deemed a burial and proper return shall be made accordingly. Before a body is removed from a vault for interment elsewhere than in the cemetery in which the vault is located, a disinterment permit must be secured."

Funerals of those dead of cerebrospinal meningitis, Asiatic cholera, diphtheria, epidemic encephalitis, glanders, leprosy, para-typhoid fever, plague, poliomyelitis, scarlet fever, septic sore throat, smallpox, typhoid fever, typhus fever, when conducted in or on the premises where such deceased person died shall be attended only by the members of the immediate household, the clergyman and the "undertaker" with his assistants; when held from a place other than where such person died, the health officer may, if the body has been embalmed and is permanently enclosed to his satisfaction, permit a public funeral, provided such persons as may be carriers of the infection by reason of contact shall be forbidden to attend such funeral. Bodies dead of the diseases mentioned, if not embalmed, must be buried within twenty-four hours.

INDUSTRIAL INVESTIGATIONS—Commissioner of Labor and Factory Inspection authorized to investigate wages, hours of employment, living expense of women and girls employed in certain pursuits, including undertaking business. Refusal to furnish pertinent information to commissioner punishable by fine of not more than \$100.

INTEREST—Legal rate, 6 per cent.

OFFICIAL BULLETIN—July 1, 1923, the Board of Examiners of Embalmers, through Mr. Edward P Jones, secretary, issued a bulletin to the licensed embalmers of the state, drawing attention to various important requirements under the local laws. The following is the gist of the bulletin.

At the 1923 session of the Connecticut legislature there was enacted a law "requiring, if death is caused by any disease named in the Sanitary Code, that no person except a duly licensed embalmer shall have charge of such body and only a licensed embalmer shall

sign the undertaker's certificate. This law also states that no burial permit shall be issued unless the certificate is signed by a licensed embalmer.

"Attention is also called to section 2954 of the General Statutes which makes it unlawful for any embalmer to sign the 'blue slip' unless he has personally 'prepared or embalmed the body.' It has been reported to the Board that certain embalmers in the past have signed death certificates and blue slips where they have had nothing to do with the preparation of the body or the arrangements for the funerals. There is no reason why an ignorant or a cut-throat undertaker should ask any licensed embalmer to sign such a certificate, and it is unlawful for a licensed embalmer to sign a certificate unless he has personally prepared and has charge of the body.

"Dr. Osborn, health commissioner of the state of Connecticut, has promised to have the statement required by law regarding preparation of bodies (called the "blue slip") printed on the back of the regular death certificate. This will be done at the next printing so that the law may be more easily complied with.

"Your attention is especially called to the use of the so-called 'yellow slip' whereby a licensed embalmer may remove a body from the town in which death occurs without having first obtained a permit. This permission was obtained after considerable work on the part of the Board and only on the understanding that licensed embalmers should be personally present when the body is removed.

"It has been reported that certain undertakers have misused this privilege. If so, it must be stopped, or the privilege may be withdrawn from all undertakers. No removal should be made unless the licensed embalmer is personally present. The Board stands ready to prosecute anyone who removes a body unlawfully provided proof in writing that will convict is furnished. Please remember (1) that after August 1, 1923, no person except a licensed embalmer can lawfully have charge of a body dying of any one of the thirty-nine diseases mentioned in the Sanitary Code: Actinomycosis, anthrax, botulism, cerebrospinal meningitis, chickenpox, Asiatic cholera, infectious conjunctivitis, all forms diphtheria, amoebic dysentery, bacillary dysentery, epidemic encephalitis, favus, German measles, glanders, gonorrhoea, hookworm infection, influenza, leprosy, malaria, measles, mumps, para-typhoid fever, plague, lobar pneumonia, poliomyelitis, rabies, scarlet fever, septic sore throat, smallpox, syphilis, tetanus, trachoma, trichinosis, pulmonary tuberculosis, tuberculosis (other forms), typhoid fever, typhus fever, whooping cough, yellow fever.

"(2) That it is unlawful for anyone except a licensed embalmer to sign a death certificate, a 'blue slip' or a 'yellow slip,' where death results from any one of the thirty-nine diseases named in the Sanitary Code.

"(3) That it is unlawful for licensed embalmers to sign any of the above statements or certificates unless he has personally prepared the body or has personally taken charge of the body.

"(4) That it is unlawful for any registrar to issue a permit for the burial of any person dying of a disease mentioned in the Sanitary Code unless the death certificate is signed by a licensed embalmer.

"(5) That it is unlawful to use a firm or incorporated name in signing a death certificate where death occurs from one of the thirty-nine diseases mentioned in the Sanitary Code."

TIME LIMITS FOR SUITS—Accounts, six years; negotiable notes, six years; non-negotiable notes, 17 years.

TRANSPORTATION REGULATIONS.—See Health Regulations and Death Statistics. September 11, 1923, the Secretary of the Connecticut Board of Examiners of Embalmers wrote the author of this book:

"You ask if Connecticut does not print the transportation rules on the back of shipping documents. In regard to this will say for a number of years we had quite an extended set of rules governing the preparation and shipment of dead human bodies. These rules followed the rules in force in other states and the rules adopted by the Railway Baggage Association. They were intended to cover the preparation and shipment of bodies so they might be taken anywhere in the United States or Canada.

"The Commissioner of Health some two years ago decided it was unnecessary to have so elaborate a set of rules as the above mentioned, so they were discontinued and in their place he wrote a very simple regulation known as Chapter III of the Sanitary Code [Regulations 190-195]. He took the position that at the present time the licensed embalmers of Connecticut were sufficiently educated and that embalming had reached a point where it was unnecessary to prescribe such definite rules as had been required in previous years. He also held that it was not a matter for the State of Connecticut to prescribe how bodies should be cared for in other states or so they might pass into or through other states—his idea being that if other states prescribed a more definite and

stringent regulation for transit it was a matter for the shipping undertaker to take care of and not for the State of Connecticut to prescribe."

DELAWARE

CLAIMS AGAINST ESTATES.—Funeral bills rank first in order of priority of right to payment

DEATH STATISTICS—"Undertaker" forbidden to act as registrar unless acting as secretary of the local Board of Health. Transportation permits obtainable from local registrar. No certificate of death shall be presented to a registrar nor shall a burial permit be granted until such certificate is properly filled out. A burial permit must be obtained before the burial of a body or before its removal from the local registration district, and in case difficulty is experienced in obtaining the death certificate from the attending physician, the state registrar should be notified. No registrar is authorized to issue a burial permit for a death that occurs outside of his own district, but when a death occurs outside of an incorporated town the burial permit may be obtained from the nearest registrar in the same main registration district. No "undertaker" shall bury a body until after he has presented a proper burial permit to the official in charge of the cemetery, and in case there is no such official, the burial permit shall be mailed to the state registrar not later than the day of the burial. Any "undertaker" who furnishes a casket, case or box to any person not a duly registered "undertaker" shall immediately notify the state registrar to that effect and shall furnish such information as may be requested by the state registrar in regard to the matter. The exact location of the cemetery in which interment is made should be stated. All certificates of death must be filed within seventy-two hours after death, regardless of the date of burial. When the place of birth of the deceased was in Delaware the exact place of birth must be

DISINTERMENT REGULATIONS.—No person shall disinter a body unless he be in possession of a written permit issued by the State Board of Health and countersigned by the Health Officer of the Local Board of Health, in whose jurisdiction the disinterment is to be made, and signed by the "undertaker" in charge of said disinterment. Provided, that for bodies buried in the city of Wilmington application for disinterment need be made only to the City Board of Health

When it is desired to disinter a body for removal from one grave to another in the same cemetery, or for removal to another cemetery, application for permit must be made to the State Board of Health. Provided, that for bodies buried in the city of Wilmington application for disinterment need be made only to the City Board of Health. Such application shall give the name of the person whose body is to be disinterred, together with the age, date of burial and cause of death, the name and location of the cemetery, hundred and county from which it is to be removed, and the name of the cemetery and location thereof where such body is to be reinterred. All applications must be made upon the proper blank forms provided by the State Board of Health and must in all cases be issued by that Board and countersigned by the Health Officer of the local Board of Health and be signed by the undertaker who is to do the disinterment.

The disinterring of bodies dead of anthrax, Asiatic cholera, bubonic plague, glanders, leprosy, smallpox, typhus fever, yellow fever, is absolutely prohibited, except by a special permit from the State Board of Health

Bodies dead from diphtheria (including membranous croup), scarlet fever (including scarlatina and scarlet rash), cerebrospinal meningitis, poliomyelitis (infantile paralysis), anthrax, Asiatic cholera, bubonic plague, leprosy, smallpox, yellow fever, may be disinterred upon a special permit granted by the State Board of Health, but all such disinterments shall be done in strict conformity with the following requirements:

The disinterment and removal must be under the direction of an "undertaker" and in accordance with the rules governing the transportation of the dead.

All disinterments shall be made under the personal supervision of a regularly licensed "undertaker" or one of at least three years' experience

The removal shall be made at an hour when there is the least possible exposure to other persons. No children shall be present, and only such persons as are actually necessary. The coffin shall not be opened, either at place of disinterment or place of destination. When the body is to be removed from the cemetery where disinterred, the coffin and remains must be inclosed in a metallic lined box. The "undertaker" authorized to conduct the disinterment shall be held personally responsible for the enforcement of these requirements. No disinterment of bodies named in Rule 3 shall be made within three years after burial of same.

Bodies that have been temporarily deposited in a receiving vault may be removed therefrom without a disinterment permit, provided, that such body, before being deposited in said receiving vault, was properly embalmed, by a licensed "undertaker," and provided that not more than 30 days have expired since the date upon which such body

was so deposited. After the expiration of 30 days, a disinterment permit shall be obtained before the removal of any dead body named in this rule. A separate application must be made for each body to be disinterred.

EMBALMERS' AND FUNERAL DIRECTORS' LICENSES—Unlawful for unlicensed person to engage in undertaking business or to assist in the conduct or management thereof. Board of Examiners consists of five reputable "undertakers" appointed by the Governor. Three-year rotating terms.

Unlicensed person desiring to engage or assist in undertaking business must appear before the Board, and any firm or corporation who shall desire to engage in such business shall cause one of the members of such firm, or corporation to appear before the Board and be examined as to his or her knowledge and skill in the undertaking business and the Board, if they shall find that such person possesses the requisite qualifications, shall issue to such person or to such firm or corporation a certificate, upon the payment of \$25. Such person, firm or corporation shall pay annually to the Board the sum of \$2 for the renewal of the certificate.

When any person upon whose examination a certificate was issued to any firm or corporation shall cease to be a member of the firm or corporation the right of the firm or corporation to continue in the undertaking business shall cease, but a new certificate may be issued to such firm or corporation on another member qualifying.

Any person, firm or corporation who shall wilfully violate any of the provisions of this Act, shall be fined not less than \$25 nor more than \$100.

The words undertaking business as used in this Act shall mean "The business of preparing for interment, and the interment of human dead bodies."

Act shall not "prevent any person from performing any service or work for any person, firm or corporation engaged in the undertaking business . . . where such work is done under the supervision or control of a person, firm or corporation who is the holder of a certificate."

INTEREST—Legal rate, 6%

MISCELLANEOUS REGULATIONS—Hearses and other vehicles used in removing a patient, or body of a person who has died from any contagious or infectious disease, shall be disinfected.

1. A body dead from smallpox must be immediately wrapped in a cloth saturated with the strongest disinfectant solution, without previous washing, and cremated or buried deep, and no such body shall be disinterred, except as specially permitted by the State Board of Health.

2. The body of a person who has died from anthrax, Asiatic cholera, bubonic plague, cerebrospinal meningitis, diphtheria (membranous croup), leprosy, poliomyelitis (infantile paralysis), scarlet fever (scarlatina, scarlet rash), typhus fever, yellow fever, must not be removed from the sick room until it has been embalmed, or if this be impracticable the body must be wrapped in a cloth saturated with a solution of corrosive sublimate (one ounce to six gallons of water), and then tightly enclosed in a coffin. The body shall then be cremated or buried within 30 hours without the attendance of any persons other than is necessary to assist at the interment thereof, provided that bodies dead from diphtheria, scarlet fever and puerperal fever, if prepared in accordance with Rule 2, adopted by the Board for the transportation of corpses, may be deposited in a receiving vault or be shipped by a public conveyance.

3. The remains of all persons who die from infectious or contagious diseases should be thoroughly injected with a disinfecting embalming fluid. External orifices must be securely closed with absorbent cotton, and the entire body, including the hair, thoroughly cleansed with a reliable disinfectant, such as a standard Solution No. 3. In cases where it is impracticable to prepare a dead body as indicated by this rule, the body must be wrapped in a sheet or cloth saturated with Standard Solution No. 3, before being placed in the casket. The "undertaker," or "undertaker's assistant," assisting in any way in the above mentioned diseases, shall wear a cap or gown, so constructed as to completely cover the clothing. This clothing shall be left on the premises, and be disinfected in the same manner as other infected articles or packed in a satchel and thoroughly sprayed with formaldehyde.

4. No embalming fluid or other agent containing arsenic or mercury shall be used in the embalming or preservation of dead human bodies for cremation, burial or shipment except as provided for external use in Rule 2.

All bodies shall either be incinerated or buried, or placed in a vault within 5 days after death. No person shall be buried so that the top of the coffin shall be less than four feet below the surface of the ground. Any "undertaker" or person violating this rule shall be liable to penalties attached to other violations of the rules and regulations of the State Board of Health.

In case of cremation, the ashes may be disposed of as desired by the family.

All bodies dead of anthrax, Asiatic cholera, bubonic plague, cerebrospinal meningitis, diphtheria (membranous croup), erysipelas, glanders, leprosy, poliomyelitis (infantile paralysis), scarlet fever (scarlatina, scarlet rash), smallpox, typhus fever, yellow fever, must be buried within 30 hours after death.

Upon the death of any person within the State of Delaware, it shall be the duty of the "undertaker" or other person superintending the burial or other disposition of said decedent, to procure from the physician in attendance at the time of death, or the Coroner when the case comes under his jurisdiction, a certificate stating further the name, age, etc., and a burial permit as required by the State Law, within 72 hours.

Burials without permit and death certificate prohibited

Funerals may not be conducted in school or church buildings, etc., in case of bodies dead from contagious or infectious diseases, excepting typhoid fever and tuberculosis, "nor shall any child be permitted to act as pallbearer or carrier at any such funeral."

"Public funerals over the remains of persons who have died from anthrax, Asiatic cholera, bubonic plague, cerebrospinal meningitis, diphtheria, leprosy, measles, infantile paralysis, scarlet fever, smallpox, typhus fever, yellow fever, are hereby prohibited. Adult persons from the infected premises may, at the discretion of the local or state board of health, under prescribed restrictions, be permitted to attend the funeral of those dying upon the premises, provided they ride to and from the cemetery in a closed conveyance, and do not leave the same until returned to the quarantine. Conveyances so used shall be properly disinfected under the personal supervision of the health officer, before being used for any purposes whatsoever. The undertaker officiating at such funeral shall be held responsible for the violation of this rule.

"No public funeral shall be held in a house or upon the premises where there is a case of any of the diseases mentioned" in the preceding paragraph, "or where a death has recently occurred therefrom"

Knowingly false statement made by a physician in a certificate of death is an offense.

TRANSPORTATION REGULATIONS—"Rule 1. The transportation of bodies dead of anthrax, Asiatic cholera, bubonic plague, cerebrospinal meningitis, diphtheria, erysipelas, glanders, leprosy, measles, infantile paralysis, scarlet fever, typhus fever, yellow fever, by public carrier is prohibited except as hereinafter provided.

"Rule 2. The bodies dead of puerperal fever, cerebrospinal meningitis, diphtheria, scarlet fever and erysipelas may be transported after being washed with a good sanitary fluid, all orifices of the body closed with cotton, and embalmed with a good standard embalming fluid (by a licensed embalmer, or one having had three years' practical experience in embalming) afterwards wrapped in cotton one inch thick, fastened securely with a sheet, or a standard sanitary transportation sheet or blanket, placed in a good coffin or casket, to be encased in a zinc, iron, or lead lined strong, hermetically sealed wooden or metallic box.

"Rule 3. The bodies dead from other causes not mentioned in Rules 1 and 2 and not embalmed, can be transported by railroad after having been bathed with a good sanitary fluid and wrapped in cotton one inch in thickness, and fastened with a sheet or a standard sanitary transportation sheet, placed in a good, strong coffin or casket, encased in a hermetically sealed iron, zinc or lead lined wooden or metallic box.

"Rule 4. The bodies dead from all other causes not mentioned in Rules 1 and 2 may be transported by railroad, after having been washed with a good antiseptic solution, and all orifices of the body closed with cotton, and embalmed by a licensed embalmer, or one having had three years practical experience in embalming, enclosed in a good strong coffin, or casket, encased in a good strong wooden box made of not less than seven-eighths or one inch in thickness.

"Rule 5. Bodies taken from receiving vaults, or disinterred bodies, shall be classed as infectious, and may be transported by railroad, provided they are encased in a zinc, iron or lead lined strong hermetically sealed, wooden or metallic box.

"The disinterring and transporting of bodies dead of cerebrospinal meningitis, diphtheria (membranous croup), erysipelas, scarlet fever (scarlatina, scarlet rash), may be done after having been buried for three or more years, provided they are prepared and encased as called for in Rule 3.

"Rule 6. When dead bodies within or from outside the State of Delaware are to be taken from train to train in the same station, or from one railroad station or boat to another, the removal or burial permit accompanying the body from the place of shipment shall be sufficient authority to continue to the place of destination.

"Rule 7. The importation of bodies dead from either Asiatic cholera, bubonic plague, leprosy, smallpox, yellow fever, into the State of Delaware, is hereby prohibited by the State Board of Health of Delaware, except by a special permit from the State Board of Health of Delaware.

"Rule 8. Railroad companies and express companies, and their agents, conductors, baggage agents, and messengers, and other transportation companies and private individuals are hereby forbidden to accept for shipment, or to import into the State of Delaware, the dead body of any human being dead from any of the diseases named in Rule 1 of this Chapter, unless the body is accompanied by a special permit issued by the State Board of Health, and the aforementioned companies, their agents, conductors and all other persons are hereby forbidden to export or import or bring into the State of Delaware any bodies unless the certificates attached to the outer box containing such body be in strict accordance with the provisions and requirements of the State Board of Health of Delaware."

TIME LIMITS FOR SUITS.—Accounts, three years; notes, six years.

DISTRICT OF COLUMBIA

CLAIMS AGAINST ESTATES.—Funeral expenses may be allowed at the discretion of the court, according to the condition and circumstances of the decedent, not exceeding \$300.

HEALTH AND TRANSPORTATION REGULATIONS; DEATH STATISTICS.—Permit required for removal, interment, disinterment, or other disposal of body. Obtainable from Health Officer and issues on presentation of proper death certificate. Permits for disinterments and reinterments issue on written application of nearest relative or legal representative.

No body or part of body shall be conveyed through the district by private or public conveyance, etc., without permit granted by Health Officer, excepting that bodies or parts of bodies not dead of Asiatic cholera, yellow fever, typhus fever, smallpox (including varioloid), leprosy, plague, diphtheria, or scarlet fever, may be brought into or carried through the district on permit issued by proper authorities at the place of death. Permits issued by Health Officer must be signed, dated and returned to that official before 6 p. m. on the Saturday following day of conveyance, transfer or removal.

Duty of one having custody or control of body to report, or cause to be reported, in writing to the Health Officer, within 48 hours after the death, name of deceased and the location of the body. No body shall be so kept as to give rise to offensive odors or be exposed to public view; nor shall it be permitted to remain unburied more than one week without permission from the Health Officer, unless it has been cremated or deposited in a cemetery vault.

In interring in vaults, coffin must be entombed in cemented stone or brick work, rendering vault airtight. After sealing vault not to be opened within ten years. Bodies not to be kept temporarily in vaults for more than one month unless in hermetically sealed metallic case, nor in any instance for more than one year.

No grave shall be opened, except for disinterment, within ten years after the burial of a person more than twelve years old, nor within eight years after the burial of a child under twelve, unless the grave has been of sufficient depth to permit subsequent interments, in which case a layer of earth not less than one foot thick shall be left undisturbed over the previously buried coffin, unless such coffin has been separately entombed in properly cemented stone or brick work; but if on reopening any grave the soil be found to be offensive, such soil shall not be disturbed. In no case shall a grave be opened in which has been buried the body of any person dead of Asiatic cholera, yellow fever, typhus fever, smallpox (including varioloid), leprosy, plague, tetanus, diphtheria, or scarlet fever.

Coffin must be buried not less than four feet below ground, excepting burials of children under twelve years of age, when three feet suffices.

Unlawful to cremate or otherwise destroy a body or part thereof, before issuance of burial permit, and then only when the permit is countersigned by the Coroner. Unlawful to embalm, etc., within four hours after death or before issuance of death certificate, and if death is believed to be due to other than natural causes, or the cause is unknown, embalming shall not occur without approval of the death certificate by the Coroner.

Violation of act punishable by a fine of not more than \$200 and/or imprisonment for not more than 90 days

Act does not prevent disinterments on proper court order

INTEREST.—Legal rate, 8 per cent.

LIMITATION OF ACTIONS.—Accounts, three years; notes, three years

REGISTRATION OF EMBALMERS, ETC.—The compiler of this book recently received a letter from an officer of the District Health Department in which he said:

"Unfortunately there are no adequate laws and regulations in force in the District of Columbia respecting the qualifications and control of embalmers and undertakers, other than registration requirements; and registration is permitted upon the presentation

to the Health Officer by the applicant of letters of recommendation from undertakers already registered.

"A bill before the Congress with respect to this matter has been pending for several years, but difficulty is experienced in getting legislation upon the subject."

FLORIDA

CLAIMS AGAINST ESTATES.—Bill for necessary funeral expenses has priority over other debts of estate

DEATH STATISTICS—State Board of Health supervises Provisions of the law substantially accord with the form of Vital Statistics Law set forth as a standard in the chapter of Death Statistics in Part I of this book

EMBALMERS' LICENSES—State Board of Embalming consists of the State Health Officer and four appointees of the Governor who have practiced embalming in the state for at least five years Four-year rotating terms Majority of Board constitutes quorum Application for license to be filed in writing with Secretary, accompanied by \$25 fee. Time and place of examination to be fixed by Board License may issue if applicant is of good moral character, possessed of the skill and knowledge of said science of embalming and the care and disposition of the dead, and has a reasonable knowledge of sanitation and the disinfection of bodies of deceased persons and the apartments, clothing and bedding, in cases of death from infectious, contagious or other communicable disease License must be registered with the county clerk of court where the licensee practices Applicant must have had at least two years' experience under a licensed embalmer. Licenses renewable annually on payment of \$2 fee. Act not to interfere with the duties of any officers of local or state institutions, and inapplicable to one simply engaged in furnishing burial receptacles for the dead and burying the dead and not embalming One practicing, or known as practicing, embalming without a license, is punishable by a fine of from \$25 to \$100 Licenses revocable for violation of the provisions of this act.

BOARD RULES—Blank applications furnished by Secretary. Applications to be sworn to, and may be filed any time but should be filed at least ten days before examination date. Applicant not entitled to examination unless at least 18 years old, a citizen of the state or an employee of a licensed embalmer, and has had at least three years' practice in embalming, or at least three years' instruction in embalming under a licensed embalmer, or holds a diploma from a school of embalming approved by the Board.

Examinations occur the third Tuesday in November, and one day of the annual meeting of the Florida Funeral Directors' and Embalmers' Association, and at such other times as the President of the Board may direct. Meetings held at Jacksonville. Examination may be deferred if application not filed before meeting. Applicant not appearing for examination may attend next examination with further fee, but if he does not appear then he is not entitled to further consideration Applicant failing to pass may be re-examined within two years without payment of further fee, but is not entitled to return of fee deposited.

The examination shall consist of an inquiry into the moral character, age, practice or practical instruction of the applicant, and an oral and written examination upon the following subjects, qualifications and requirements:

(a)—The applicant must have completed a high school education, be of good moral character, endorsed by a licensed embalmer of good repute as to his general standing, pass a practical examination upon a cadaver, where required, and pass a written examination of not less than fifty questions as prepared by the Board or by the Secretary at the request of the Board, and also pass an oral examination of not less than twenty questions similarly prepared. The applicant must attain a proficiency of 75 per cent on the entire examination, and must not leave the room while taking the examination unless a member of the Board accompanies him

All written questions must be returned to the Board with the answers.

Licenses are renewable annually in January on paying \$2 fee. Licensees not renewed may be reinstated by paying renewal fees accrued since expiration of license. Practice pending renewal of license not permitted

"An employee, student, apprentice, helper, undertaker, funeral director, or any other person who is not a holder of a license . . . shall not attempt to practice the science of embalming, in any of its branches, unless a licensed embalmer or he or she be an actual employee of a licensed embalmer and said embalming is done under a licensed embalmer's personal direction and supervision"

Licenses must be displayed in place of business, as well as registered with county clerk of court

Licenses revocable for lack of good moral character, for gross or wilful malpractice in embalming, or violating any law or regulation governing the disposition of bodies,

etc., or knowingly making false certificate of embalming, or for gross or willful professional neglect, or for knowingly making false statement in application for license, or for interfering with another licensed embalmer having legal charge of a body. Duplicate licenses obtainable for \$2. No temporary license issued

OCCUPATION TAXES—"Undertakers" who are not embalmers, in cities of 10,000 or more, \$50 a year; in cities of 5,000-10,000 population, \$35, in cities and towns of 5,000 or less, \$15. "Undertakers" and embalmers, cities of 10,000 or more, \$100, cities of 5,000-10,000 population, \$75, cities and towns of 5,000 or less, \$25

TIME LIMITS FOR SUITS—Accounts, 3 years, notes, 5 years, if not under seal, sealed instruments, 20 years

TRANSPORTATION REGULATIONS—See Section 11 of Part I of this book.

GEORGIA

CLAIMS AGAINST ESTATES.—Funeral bills have priority over other debts of estate, but are subject to allowance for support of family for one year

DEATH STATISTICS—Vital Statistics Law substantially accords with the provisions set forth in the chapter on Death Statistics in Part I of this book, sections 17, 18

EMBALMERS' LICENSES—State Board of Embalming consists of five members appointed by the Governor, and having experience in embalming, caring for and disposing of bodies. Members serve rotating terms of five years each. Board required to prescribe a standard of fitness to engage in embalming, etc.

An unlicensed person desiring to practice embalming must apply to the Board in writing and pay a fee of \$5.00. Applicant must be of good moral character and show on examination a knowledge of the venous and arterial systems, the location of heart, lungs, stomach, bladder, womb and other organs in the human body, the location of abdominal, pleural and thoracic cavities, the location of the carotid, brachial, radial, ulnar, femoral and tibial arteries; a knowledge of the science of embalming and the care and disposition of the dead, and a reasonable knowledge of sanitation and the disinfection of bodies of deceased persons and the apartment, clothing and bedding, in case of death from infectious or contagious diseases. Licenses must be registered in the Ordinary's office of the County where business is carried on and must be displayed conspicuously in the holder's office. Licenses renewable annually on payment of \$2 fee. Act not applicable to those merely furnishing burial receptacles. Practicing or holding oneself out as practicing without a license is punishable by \$50-\$100 fine.

BOARD RULES—Applications to be made on blanks furnished by Secretary and to be sworn to. May be filed any time, but should be filed at least ten days before examination meeting. Applicant not entitled to examination unless 21 years old and engaged in embalming for at least two years or having at least two years' practical instruction in embalming. Examinations held once a year at times and places fixed by Board. Notice of meetings to be published in at least three journals 30 days before date of meeting. Applicant failing to pass is not entitled to return of fee, but may be re-examined within two years. Applicant must be endorsed by a licensed embalmer and three citizens of good repute. A term in an embalming college or school may be counted in computing two years' experience in embalming.

Examination upon cadaver may be required. Examination covers the following subjects: Anatomy of the principal organs of the body, 10 questions, cavities of the human body, 5 questions, arterial and venous system, 10 questions, the blood and discolorations, 5 questions, arterial and cavity embalming, 10 questions, transportation rules, 4 questions, bacteria and disinfection, 6 questions. Applicant must attain at least 75% grade.

One holding a license in another jurisdiction may be licensed on payment of \$5 fee and a showing that he was duly examined in the other jurisdiction. On proper showing the Secretary may issue a temporary license when applicant has accepted a position as an embalmer in Georgia.

Licenses expire December 31st and are renewable by February 1st. One who has failed to renew license for more than six months may be reinstated on payment of back renewal license fee.

The rules define "embalming" in conformity with the definition given in the Chapter on "Licensing of Embalmers and Undertakers" in Part I of this book.

Licenses are revocable for lack of good moral character, for gross or wilful malpractice, wilful violation of law or regulation, etc.

INTEREST—Legal rate, 7%

TIME LIMITS FOR SUITS—Account, 4 years; notes, 6 years, if not under seal, sealed instruments, 20 years

TRANSPORTATION RULES—See Section 11 in Part I of this book

CLAIMS AGAINST ESTATES—Funeral bills have priority over other claims

IDAHO

DEATH STATISTICS.—The law in the main follows the standard type of vital statistics registration acts, the essential provisions of which are set forth in Part I of this book in the chapter on Death Statistics. The Idaho law, however, appears to omit the provisions mentioned in paragraphs 6 and 9 of the form of law appearing in our chapter above referred to. See sections 17, 18 of this book.

DISINTERMENT REGULATIONS.—"No body shall be disinterred except upon a permit granted by the Department of Public Welfare. Disinterment and removal must be done under the personal supervision of a licensed embalmer, and must be done at an hour when there is the least possible exposure. Only such persons as are actually necessary shall be present. The coffin shall not be opened either at place of disinterment or place of destination, except special permit to be issued by the Department of Public Welfare. And in case of disinterment of bodies dead by reason of contagious and infectious diseases, as shown by the certificate of death given by the attending physician, the sexton and all other persons engaged in such removal or being present shall immediately thereafter change their clothing and properly disinfect their hands, head and face, provided, that such disinterment may also be governed by rules and regulations promulgated by the Department of Public Welfare and a synopsis of the same shall be printed on the back of every permit; provided, also, that in case of any contagious and infectious disease where remains are to be shipped to points in other states, permission must first be obtained from the Secretary of the State Board of Health of such State. The Department of Public Welfare may also issue a special disinterment permit for legal purposes. This permit for legal purposes shall be granted only upon application of a prosecuting attorney or the Attorney General of this State, stating therein such facts which make it evident to the Department of Public Welfare that the ends of justice require that disinterment be permitted. Such special disinterment for legal purposes shall be governed by rules and regulations promulgated by the Department of Public Welfare and a synopsis of the same shall be printed on the back of every such special disinterment permit for legal purposes."

EMBALMERS' LICENSES.—Department of Law Enforcement empowered to determine qualifications entitling one to practice embalming. License must be obtained from that Department before one may "embalm or otherwise prepare for transportation by railway or other public conveyance" bodies, "or publicly profess to practice the art of embalming." Examining committee consists of one member of the State Association of Funeral Directors and two physicians of the Department. Applicant must be at least 21 years old, with not less than two years' practical experience under a licensed embalmer in the state, one year of such experience and have completed a course of instruction in a recognized school of embalming. Applicant must have embalmed at least ten bodies under supervision of licensed embalmer. Application must be signed, sworn to, and accompanied by a certificate of good moral character signed by three responsible citizens, one of whom must be a licensed embalmer acquainted with applicant for at least a year.

Every graduate of an accredited college of embalming and has practiced his profession in this state for at least one year, must, within 60 days, apply to the Department for a license, and, upon filing such diploma and paying a fee of \$10, a license shall issue. All other applicants for license, shall be examined in the following subjects: Anatomy, sanitary science, the care, disinfection, preservation, transportation of and burial, or other final disposition of dead bodies, and the rules and regulations of the Department relating to infectious diseases and quarantine, he shall also demonstrate his proficiency as an embalmer by operations on a cadaver. Each applicant first to pay a fee of \$10. The average rating required to pass shall be fixed by the Department prior to the examination. If the examination be satisfactory to the examining committee, it shall so report to the Department; if the Department find the report and the rating correct, it shall authorize issuance of a license to the successful candidates, for which such candidate shall pay an additional fee of \$1. The license, while in force, shall confer upon the holder the right to practice embalming, or to otherwise prepare dead bodies for transportation, burial, or other authorized mode of final disposition and shall be conclusive evidence thereof.

Licenses may be renewed annually on or before July 1st, on application and payment of \$2 fee without examination.

Licenses of other jurisdictions having substantially the same requirements and recognizing Idaho licenses may be recognized as sufficient evidence of qualifications, and holder admitted on payment of \$10 fee.

Licenses to be registered in the office of the Department may be refused or revoked for false or fraudulent representation, habitual intoxication, immoral, unpro-

fessional or dishonorable conduct, violation of regulations, etc. Notice and hearing of charges to be given.

BOARD RULES.—Examinations at State Capitol on third Tuesday in January and July. Applications for examinations to be filed 15 days before, and to be accompanied by unmounted photograph taken within one year. Applicant must have had a high school education or its equivalent.

HEALTH LAW.—The undertaker or person in charge of the funeral of any person dying of tuberculosis, shall within 48 hours after the death of the person report to the Health Officer of the city or town, or county, the name and residence of the deceased person, together with cause of death. Upon receipt of the notice as herein provided, the health officer of the city, or town, or county, shall cause said premises to be disinfected in accordance with the regulations of the Department of Public Welfare.

INTEREST—Legal rate, 7%.

TIME LIMITS FOR SUITS.—Accounts, 4 years, notes, 5 years

TRANSPORTATION RULES—See Section 11 in Part I of this book

ILLINOIS

CLAIMS AGAINST ESTATE.—Executor empowered to bury deceased and pay necessary funeral charges before obtaining letters testamentary. Funeral expenses and cost of administration have priority over other demands against estate.

CORONER LAW.—Unlawful to embalm body without permission of coroner where body is subject to coroner's inquest. Fine not exceeding \$50.

DEATH STATISTICS.—Law contains provisions substantially the same as those set forth in sections 17, 18 in the chapter on Death Statistics in Part I of this book as a standard for comparison. The following provisions also appear in the Illinois law:

"Where it is necessary to obtain a burial or removal permit before completion of an inquest, the coroner may make out a temporary certificate pending inquest, which certificate shall, whenever practicable, give all the personal and statistical particulars required by this Act and the rules of the State Board of Health. Such certificate shall be marked at the top: 'For temporary use only,' and shall state under the item cause of death 'Inquest pending.' Such temporary certificate shall not be considered a substitute for the permanent certificate.

"When the body is the subject of an inquest or an investigation by the coroner, the personal and statistical particulars required herein shall be obtained by the coroner at the time of the inquest or investigation, and over the signature and address of the informant; *Provided, further,* that for deaths in hospitals and institutions, the personal and statistical particulars required herein shall be furnished by the physician or person in charge of such hospitals or institutions, who shall obtain the information from the records of said hospital or institution."

DISTURBING FUNERAL is punishable by a fine of not more than \$100.

EMBALMERS' LICENSES.—Granted by State Department of Registration and Education. To qualify applicant must be at least 21 years old, of good moral character and temperate habits, and a graduate of an approved common school or have completed an equivalent course of study as shown by examination by Department. Applicant must also have graduated from an approved school of embalming after at least six months' course of study, and pass an examination. Must also have studied under registered embalmer for at least one year.

Apprentices to register on showing that they are at least 18 years old, of good moral character and temperate habits, graduated from an approved common school, eighth grade, or completed equivalent course as shown by examination by Department, and entry upon study of embalming under a registered embalmer, or intention so to enter. Fee, \$1. Apprentice may embalm only under immediate personal supervision of registered embalmer.

Embalmers' and apprentices' licenses renewable annually in January. Fee, \$1. Revival fee on failing to renew in January, \$2. One retiring from practice for not more than five years may be reinstated on payment of lapsed renewal fees. Embalmers' examination fee, \$5.

Practicing embalming consists in embalming bodies or preparing for transportation bodies dead of contagious or infectious disease. Act not applicable to those conducting funerals but not practicing or attempting to practice embalming.

Applications to be made on blanks furnished by Department. Examinations held at such times and places as fixed by Department. Embalmers' examination "may include both practical demonstrations and written and oral tests and shall embrace the subjects of anatomy, sanitary science, and the care, preservation, embalming, trans-

portation and burial of dead human bodies." Additional subjects may be prescribed by Department.

Licenses to be displayed conspicuously in office May be denied or revoked for conviction of felony, fraud in obtaining license or in practice, practicing with knowledge of having contagious or infectious disease, habitual drunkenness or drug addiction Provision for hearing of charges and for appeal to courts

Violations of law punishable by \$25-\$200 fine

Illinois Laws, 1923, p. 622, provides that examinations shall be conducted, rules applicable to licensing shall be formulated, etc., by the Department of Registration and Education only upon the action and report in writing of "five persons, each of whom has been a licensed practitioner of embalming in this state for at least five years prior to their designation, and no one of whom is in any way connected with or interested in any school or college where embalming is taught"

EMBALMING FLUIDS—Manufacture or sale of embalming fluid forbidden if it contains arsenic or strychnine, without having the words "Arsenic contained herein," or "Strychnine contained herein" on the label Use of any fluid or preparation containing arsenic or strychnine in embalming, etc., a body is forbidden under penalty of a fine of not less than \$50

FUNERAL REGULATIONS—Public funerals are permissible in deaths from pneumonia under the following circumstances (a) When the body of the deceased person is properly embalmed; (b) when a body not embalmed is inclosed in a tight casket, the cover of which may or may not have a glass portion to permit viewing the remains. This cover should not be removed in the presence of the public

INTEREST—Legal rate, 5 per cent

TIME LIMITS FOR SUITS—Accounts, five years; notes, ten years.

TRANSPORTATION RULES—No dead human body shall be transported by common carrier in Illinois unless accompanied by a transit and burial permit issued by the proper registration official (a local registrar) and every dead body so transported also shall be accompanied by a person in charge (an escort), who shall be provided with a passage ticket for self and a full first-class ticket marked "corpse" for transportation of the body

The *Transit and Burial Permit* shall set forth at least the following data (a) A certified copy of the following data from the death certificate. name of deceased, sex, age, color, place of death, date of death, cause of death, name of medical attendant or coroner, address of attendant or coroner; same to be certified by the local registrar with whom the original certificate of death has been filed (b) A permit for removal or burial setting forth at least the following Name of person to whom permit is granted, residence of said person, number of embalmer's license held by said person, name of decedent, place from which body is to be moved, place to which body is to be moved, name of cemetery or other place in which body is to be buried or otherwise disposed of, whether disease causing death is a communicable or non-communicable disease, all of which shall be over the signature of the local registrar with whom the original certificate of death has been filed It is further required that when the disease causing death is a communicable disease, the permit shall be approved (countersigned) by the local health official at the place where the death occurred The name of the person (escort) who will accompany the body to its destination shall also be stated in this section

Attached to the *Transit and Burial Permit*, there shall be a *Transit Label* which shall set forth at least the following (a) The undertaker's certificate certifying on oath that the body of decedent therein named has been prepared by the certifying undertaker in strict accordance with the Rules Governing the Transportation of Dead Human Bodies in Illinois and giving the name of person to whom the body is consigned, the address of the consignee, the cause of death, whether the disease causing death is a communicable or non-communicable disease, date of death, place of death, number of the license held by the certifying undertaker, the signature and address of the undertaker, all of which shall be duly sworn to before a Notary Public; (b) the route and description of ticket, all of the data therein called for to be inserted by the station baggageman to whom the body accompanied by the transit and burial permit is presented for transportation

The baggageman shall then detach the *Transit and Burial Permit* from the *Transit Label*, turning the former over to the person who will accompany the corpse to its destination and attaching the latter (the *Transit Label*) securely to the end of the coffin box.

Provided, that, when a body is to be transported by common carrier to a cemetery within or immediately adjacent to a city, a transit permit will not be required, but in any such case a body shall not be accepted for transportation by common carriers unless accompanied by a burial permit issued by the local registrar of the place where the death occurred or the body was found

When a body is shipped by express and without escort, the Transit Label shall be securely attached to the end of the coffin box and the Transit and Burial Permit shall be attached to and accompany the express way-bill covering the remains and upon arrival at destination of the body the Transit and Burial Permit shall be delivered with the body to the person to whom the body is consigned

2. The transportation of the dead from smallpox, diphtheria (diphtheritic sore throat, membranous croup), scarlet fever (scarlatina, scarlet rash, Duke's disease), poliomyelitis (infantile paralysis), cerebro-spinal fever, epidemic meningitis, bubonic plague, Asiatic cholera and typhus fever, shall be permitted only under the following conditions.

The body shall be thoroughly embalmed with an approved disinfecting fluid by arterial and cavity injection; all orifices shall be closed with absorbent cotton, the body shall be washed with an approved disinfecting fluid and placed at once in the coffin or casket, which shall be immediately closed. The coffin or casket, or the outside case containing the body, shall be metal or metal lined and hermetically and permanently sealed. Embalming and other preparation must be done by a licensed embalmer holding a license as such issued by the Illinois State Board of Health, or, if issued subsequent to June 30, 1917, by the State Department of Registration and Education

If the body is prepared as above provided, and is enclosed in a hermetically sealed and metal lined coffin or casket, the coffin or casket may be provided with a plate of glass of sufficient dimensions to disclose the face. The glass must be heavy plate glass and must be fitted in the casket in such manner as to be water and air tight and not removable, and must be protected by an extra cover of wood or metal to prevent breakage in transit.

In all cases where bodies are forwarded under Rule 2, notice must be sent by telegraph by the shipping embalmer to the health officer, or when there is no health officer, to other competent authorities at destination, advising the date and train on which the body may be expected. The coffin must not be opened after reaching its destination. (As amended June 1, 1918)

3. The transportation of bodies dead of any disease other than those mentioned in Rule 2 shall be permitted under the following conditions:

(a) When the destination can be reached within twenty-four hours after death, the coffin or casket shall be encased in a strong outer box made of good sound lumber not less than seven-eighths of an inch thick, all joints must be tongued and grooved, top and bottom put on with cleats, or cross-pieces, all put securely together

(b) When the destination cannot be reached within twenty-four hours after death, the body shall be thoroughly embalmed by a licensed embalmer holding a license as such issued by the State Board of Health, or, if issued subsequent to June 30, 1917, by the State Department of Registration and Education, and the coffin or casket placed in an outside case constructed as provided in paragraph (a), Rule 3

(c) All bodies of persons dead from diseases not enumerated in Rule 2, and which are to be transported by railroad from the state and county institutions at Dunning or Oak Forest to Chicago, shall be accepted for transportation when such bodies are wrapped in sheets saturated with a solution of bichloride of mercury in the strength of an ounce of bichloride of mercury in the gallon of water, and enclosed in strong cases of air-tight and water-tight construction. There shall be no transfer of the dead body from such case to a casket or coffin or other container while in transit, in any railway car, station, baggage or express room, or in any place where there may be exposure to the public. The case referred to in this paragraph, after the body has been removed therefrom, shall be thoroughly washed or disinfected with a solution of bichloride of mercury in the strength of one ounce of bichloride of mercury to the gallon of water, and shall not be used again for any purpose other than as an outer case for interment in a Chicago cemetery. Railways shall not receive the box referred to in this paragraph unless the requirements herein set forth have been strictly complied with

4. No disinterred body dead from any disease or cause shall be transported by common carrier unless approved by the State Department of Public Health and by the health authorities having jurisdiction at the place of disinterment, and Transit Permit and Transit Label shall be required as provided in Rule 1. Disinterment permits and reinterment permits must first be obtained from the local registrar at the place of disinterment

The disinterment and transportation of bodies dead of diseases mentioned in Rule 2 shall not be allowed except by special permission of the State Department of Public Health and of the health authorities at both the place of disinterment and the point of destination

All disinterred remains shall be enclosed in metal or metal-lined boxes and hermetically sealed (soldered); provided that bodies in a receiving vault when prepared by

licensed embalmers shall not be regarded as disinterred bodies until after the expiration of thirty days.

5 The outside case may be omitted in all instances when the coffin or casket is transported in hearse or undertaker's wagon

6. Every outside case shall bear at least four handles, and when over 5 feet 6 inches in length, shall have six handles.

7 In the transportation in or through Illinois of bodies shipped from points outside of Illinois, transportation officials will be governed by the Official Rules of the State Department of Public Health, which are based on rules adopted by the Conference of State and Provincial Boards of Health of North America.

Before selling tickets, railroad agents shall carefully examine the transit permit and note the name of the passenger in charge, and of any other person proposing to accompany the body, and shall see that all requirements have been complied with. The transit permit in such cases shall specifically state who is authorized by the registration official to accompany the remains. In all cases where bodies are forwarded in accordance with Rule 2, notice must be sent by telegraph by the shipping embalmer to the health officer, or, when there is no health officer, to other competent authority at destination, advising the date and train on which the body may be expected.

8 An approved disinfectant fluid shall contain not less than five per cent of formaldehyde gas. The term "embalming" as employed in these rules shall require the injection, by licensed embalmers, of not less than ten per cent of the body weight, injected arterially in addition to cavity injection, and twelve hours shall elapse between the time of embalming and the shipment of the body.

INDIANA

BURIAL AND DISINTERMENT REGULATIONS.—Blank burial permits are supplied by the State Board of Health. Human remains, exceeding seven months' gestation, shall not be buried without a permit issued by a health officer or deputy, and no permit shall be issued unless the health officer or deputy has in hand a certificate of death properly filled out in ink or indelible pencil. In all cases of death from cholera, bubonic plague, leprosy, typhus fever, yellow fever, smallpox, diphtheria, membranous croup, scarlet fever and cerebro-spinal fever, the funeral shall be strictly private and the burial shall be made according to the rules of the State Board of Health. No public or church funeral shall be held or any person permitted to enter the house containing the remains, except the relatives of the deceased, the minister, the undertaker and his (their) assistants, unless by permission of the health officer. Buried human remains shall not be disinterred or removed without permission from the State Board of Health, and blank applications for disinterment and removal may be had at any time upon application to said State Board. When disinterment and reinterment is to be made in the same cemetery, no permit is required. Bodies which have lain over one week in a vault are to be regarded as buried, and must not be removed, buried or otherwise disposed of without a permit, provided that bodies in a receiving vault when prepared by a licensed embalmer shall not be regarded as disinterred bodies until after the expiration of thirty days. If remains are deposited in a vault and subsequently removed for burial in the same cemetery, no permit is required.

CLAIMS AGAINST ESTATES.—Funeral bills rank second only to administration expenses in right of priority of payment.

DEATH STATISTICS.—Blanks for death statistics supplied by the State Board of Health are: Death certificates, death certificates (for coroners), burial permits, no birth or death cards, official envelopes, monthly statement cards. The physician in attendance at a death, or the householder, if no physician is in attendance, shall immediately make out a death certificate and personally deliver said death certificate, or instruct that it be delivered, to the health officer or deputy having jurisdiction, who, upon receipt of same, provided, said certificate is completely filled out, is written in ink or indelible pencil, and is otherwise acceptable, shall make out a burial permit, for which no fee shall be charged. Said burial permit is valid in all parts of the state. When no physician is present at a death, and the householder can not be found, and it is not a coroner's case, the health officer shall make out the death certificate and sign it. All health officers shall immediately copy into their death record books all death certificates they receive which belong to their jurisdictions, and, carefully preserving said certificates, shall send them to the State Board of Health, in the official envelopes, on the 4th of each month, for the month preceding, and there shall always be enclosed with the said certificates, a monthly statement card, filled out according to the blanks on said card. When a death occurs outside of the state, and the remains are brought into the state for interment, the burial permit shall be based upon the transportation permit, and no record of said death is required.

The form of death certificate used is the standard form which is set forth in the chapter on Death Statistics in Part I of this book, section 18

EMBALMERS' LICENSES.—Indiana Acts, 1923, chap. 62, re-enacts the law relating to the licensing of embalmers. It provides for a State Board of Embalmers of five members, who shall be practical embalmers practicing in the state, and who shall serve four-year terms. Appointments by the Governor. Board empowered to adopt rules to better the standards of embalming, etc. Secretary receives not less than \$300 per year and ten cents for each renewal license. Members entitled to \$10 per day and actual traveling expenses for each day's actual attendance on Board business. Meetings must be held annually and special meetings may be called. Notice to be given applicants for licenses of the time and place of special meetings.

"Embalming" is defined as "the preservation and disinfection, or attempted preservation and disinfection, of the human dead body by application of chemicals externally, or internally, or both."

"Dead human bodies shall in no way be prepared for burial except by a licensed embalmer of the State of Indiana."

One over 21 years old desiring to practice embalming shall appear personally before the Board for examination and pay a \$10 examination fee. Written examination covers applicant's "knowledge of embalming, sanitation, anatomy, and all educational subjects pertaining to modern embalming, the disinfection of bodies of deceased persons and apartments wherein the same may be found, the clothing, excreta and other things likely to be infected in cases of death by communicable disease; all in accordance with the rules and regulations of the State Board of Health, the State Board of Embalmers, and the laws of the State of Indiana." Examination includes demonstration upon cadaver. "If the applicant be of good moral character, and shall have completed a four-year course in a duly commissioned high school, or a course of education equivalent thereto, and shall have had one year's actual training in practical embalming in a school or college prescribing a special course in the science of embalming and approved by the State Board of Embalmers, or shall have completed a four years' course in a duly commissioned high school, or a course of education equivalent thereto, and has had three years of continuous, actual and practical instruction and training under a regularly licensed and practicing embalmer of Indiana; and, . . . shall pass such examination . . . then said board shall issue . . . a license . . . for a period of one year." High school course not required of those applying for license before June 1, 1924.

Licenses renewable annually on payment of \$5. On failing to renew within 30 days, but renewing within 90 days, fee is \$10. After 90 days no renewal unless re-examination is passed.

Application forms furnished by Board, and must be sworn to when executed.

Within 30 days after beginning preliminary instruction and training under an embalmer, one must file with the State Board of Embalmers a statement showing when the instruction, etc., began and the name of the embalmer. If during the three-year period of training he serves under more than one embalmer he must make similar statements, showing the commencement of connection with each successive embalmer. Persons already in training when the act was passed need not file statement until he takes examination.

Licenses revocable for unfitness or incompetency to practice, violation of this act or of rule of Board of Embalmers or State Board of Health, conviction of felony. Provision made for notice of time and place for hearing charges.

Practicing embalming, or holding oneself out as being prepared to practice, without license, is unlawful.

Board may recognize licenses issued in other states and issue Indiana licenses on them.

Violations of the act are punishable by a fine of not more than \$500, to which may be added imprisonment for not more than one year in county jail.

INTEREST—Legal rate, 6 per cent, contract limit, 8 per cent.

MOTOR VEHICLE LICENSES—Indiana Acts, 1923, chapter 186, providing for the registration of motor vehicles specifies that "hearses and ambulances shall not be classified as trucks, but shall be classified as passenger cars and the fees applied according to the passenger car rates."

TIME LIMITS FOR SUITS—Accounts, six years; notes, 10 years.

TRANSPORTATION RULES—See Section 11 in Part I of this book.

IOWA

CLAIMS AGAINST ESTATES—Statute provides that "As soon as the executor or administrator is possessed of sufficient means over and above the expenses of administration, he shall pay off the charges of the last sickness and funeral of deceased," etc.

DEATH STATISTICS.—Law substantially same as standard type of vital statistics law set forth in the chapter on Death Statistics in Part I of this book, sections 17, 18.

EMBALMERS' LICENSES.—Unlawful to embalm or otherwise prepare body for transportation, or to profess to practice embalming without license from State Board of Health. Examining committee annually selected by Board and to comprise two physicians who are members of the Board and two licensed embalmers who are entitled to \$8 per day for time actually employed. Examinations in Des Moines, in July and January, and at such other times as the Board may direct. All applicants shall be at least 21 years and shall have had not less than two years' practical experience under a licensed embalmer in this state, or in lieu thereof, shall have had a practical experience of not less than one year under a licensed embalmer, and have completed the regular course of instruction in an approved school of embalming; and shall have embalmed not less than ten bodies under supervision of licensed embalmer. Applicant shall file with the Secretary of the State Board of Health, not later than ten days before the next examination, a sworn statement of his age and other qualifications required, and a certificate of good moral character, signed by three responsible citizens, one of whom must be licensed embalmer acquainted with applicant for at least one year. Applications to be made on blanks furnished by the Board. Examinations cover anatomy, sanitary science, the care, disinfection, preservation, transportation and burial, or other final disposition of dead bodies, and the rules and regulations of the State Board of Health relating to infectious diseases and quarantine; applicant shall also demonstrate his proficiency as an embalmer by operations on cadaver. The examination answers shall be graded upon the scale of 100, each applicant first to pay, to the Secretary of the Board, a fee of \$5.00. The average rating required to pass shall be fixed by the Board before the examination. If the examination be satisfactory to three members of the Examining Committee, it shall so report to the Board; if the Board find the report and the rating correct, it shall authorize its President and Secretary to issue a license to the successful candidates on an additional fee of \$1.

Licenses expire annually June 30 and are renewable within 30 days on payment of \$1 fee. Licenses and renewals to be registered with local Board of Health. One licensed in another state may be admitted without examination, on payment of \$10 fee, if requirements in other state substantially same as in Iowa and if other state recognizes Iowa licenses.

Licenses may be denied or revoked for fraud, intemperance, immorality, unprofessional or dishonorable conduct, violation of law or rule, etc., on notice and hearing.

Violation of act punishable by fine of not more than \$100 and/or imprisonment for not more than 30 days.

HEALTH REGULATIONS

WHERE BODY NOT TRANSPORTED BY RAILWAY, ETC

Methods required in the handling of a corpse shall be divided into three classes, depending upon the cause of death.

CLASS ONE shall cover the bodies of all persons who have died of any of the following diseases: Diphtheria, scarlet fever, smallpox, meningitis, poliomyelitis, plague, cholera, typhus, glanders, anthrax, yellow fever.

REPORTING.—It shall be the duty of every licensed embalmer who is called upon to embalm or inter a body dead of any of the above mentioned diseases to report this fact to the local Board of Health before interment may take place. Such licensed embalmer shall be subject to the same penalties for failure to report this matter as physicians, and others who fail to report the existence of contagious diseases, but no licensed embalmer shall be prosecuted for failure to report a case that has already been reported to the local Board of Health.

DEATHS WITHIN QUARANTINE.—Bodies dead of any of the above mentioned diseases should always be found in a duly established quarantine. Where death has occurred within a quarantine area the licensed embalmer may enter such quarantine to perform any and all of his professional duties.

QUARANTINE AFTER DEATH.—In cases where a quarantine was not established before death, the local Board of Health must establish a quarantine as soon as it is notified that death has occurred from any of the above mentioned diseases. This quarantine can only be lifted by the local Board of Health after all the rules of the State Board of Health, relating to cleaning and disinfecting have been complied with. In the meantime, the licensed embalmer may proceed with the preparation of the body for interment.

PREPARATION OF THE BODY.—The body of any person who has died of any of the above mentioned diseases shall be prepared by washing the body with a strong

disinfecting solution, the plugging of all body cavities including the ears, nose, throat, mouth and rectum with sufficient absorbing material to absorb and retain all normal and abnormal secretions or fluids. In addition the body shall receive arterial and cavity injection or the body shall be entirely wrapped in a layer of dry cotton one inch thick, this to be entirely wrapped in a sheet saturated with a strong disinfecting solution. Bodies prepared for burial by being wrapped in dry cotton and moist sheet as described above and made ready for burial without cavity and arterial injection, shall be entirely covered by such cotton and sheet and no part of such body shall be exposed. The care and preparation of the body shall be done entirely in private and no one shall be allowed in the preparation or embalming room except the licensed embalmers and their assistants until the body is fully prepared and dressed. The body will then be placed in a casket and the licensed embalmer shall himself close and secure the lid as soon as the body is properly prepared. After the body has been placed in the casket it shall be the duty of the licensed embalmer to see that the body is not handled or moved by any unauthorized person. It shall be unlawful for any person except a licensed embalmer to open a casket that contains a body of any person dead of any of the above mentioned diseases.

FUNERALS—There shall be no public funeral of any person who has died of any of the above mentioned diseases. Private religious services may be held in the quarantine area but the person conducting said service must remain outside the quarantine. Friends may accompany the body to the cemetery, but it is hereby made the duty of the licensed embalmer to warn such friends that they must not approach nor touch the persons who have just come from the quarantine area. The persons who have been in the quarantine may be released from the quarantine for the purposes of accompanying the body to the cemetery, if they are furnished with a separate carriage from which they do not dismount or leave until they have returned to the quarantine area. All persons granted this privilege must keep themselves strictly apart and separate from all others at the cemetery on pain of having committed a misdemeanor.

The local Board of Health, or in the absence of the Health Officer, the licensed embalmer in charge of the funeral, must see that the public is not exposed to any contagious diseases by reason of the visit of the quarantined persons to the cemetery, and it shall be their duty to see that the persons who have left quarantine to visit the cemetery shall return at once and re-enter the quarantine where they must remain until they are released by the local Board of Health. No person, company, corporation or association shall allow any school, church or other building to be used to conduct a funeral of any person dead of any of the hereinbefore mentioned diseases.

CLASS TWO covers bodies dead of any of the following diseases: Actinomycosis, Anchylostomiasis, chickenpox, chancreoid, dengue, dysentery, erysipelas, Rocky Mountain fever, favus, influenza, gonorrhea, leprosy, malaria, tetanus, measles, mumps, paratyphoid, pneumonia, rabies, whooping cough, rubella, septic sore throat, syphilis, trachoma, trichinosis, typhoid fever, tuberculosis.

REPORTING—Same duty and penalty as under Class One.

PREPARATION OF THE BODY—Same requirements as under Class One.

FUNERALS—The funeral for persons having died of any of the diseases hereinbefore mentioned as Class Two may be a public funeral unless ordered otherwise by the State or Local Board of Health. The casket may be opened for a few moments during the services, provided that the licensed embalmer is in personal attendance and supervises the same.

CLASS THREE covers bodies dead from any other cause than those causes covered by Classes Two and Three.

It is not necessary for a licensed embalmer to report to the local Board of Health the burial of the body of any person dead of any of the causes listed as "Class Three."

PREPARATION OF THE BODY—The body of any person who has died from any of the causes in Class Three shall be prepared for interment by the most approved methods of cavity and arterial injection. The care and preparation of the body shall be done entirely in private and no one shall be allowed in the preparation or embalming room except the licensed embalmers and their assistants or someone requested by the family to be present until the body is fully prepared and dressed. Nothing in this section shall be construed as preventing any school of embalming recognized by this State Board of Health from embalming bodies in the presence of their enrolled students.

FUNERALS—Public funerals may be held for any person dead of any of the causes listed as "Class Three" unless otherwise ordered by the Local or State Board of Health.

SPECIAL RULE APPLYING TO ALL FUNERAL HOMES, ETC—The care and preparation of all persons dead of any cause shall be entirely private and no one shall be allowed in the embalming room except the licensed embalmers and their as-

sistants until the body is fully prepared and dressed, except by permission of the immediate family. The Secretary of the State Board of Health shall have prepared suitable placards for framing, setting forth this rule. These placards shall be furnished by the Secretary of the State Board of Health to all licensed embalmers. The licensed embalmer shall have them framed and permanently fastened to all doors of the preparation or embalming rooms. There shall also be one of these framed placards on display in the general office of every undertaking establishment. Any embalmer failing to comply with this rule shall have his license revoked.

DISINTERMENT REGULATIONS—No person shall disinter a body without a written permit by State Board of Health, countersigned by the health officer of the local board of health. When it is desired to disinter a body for removal from one grave to another in the same cemetery, or for removal to another cemetery, application for permit therefor must be made to the State Board of Health. Such application shall give the name of the person whose body is to be disinterred, together with the age, date of burial and cause of death, the name and location of the cemetery, township and county from which it is to be reinterred. All applications provided for in this rule must be made upon the proper blank forms provided by the State Board of Health and must in all cases be signed by the licensed embalmer who is to do the disinterment.

Bodies of those dead of a non-contagious disease may be removed by private conveyance from one cemetery to another in the same locality by encasing in a sound outside box. Bodies of those dead of a contagious disease may be removed from one grave to another in the same cemetery by encasing in a sound outside box. All others to be hermetically sealed.

Bodies dead from diphtheria, membranous croup, scarlet fever, scarlatina, scarlet rash, cerebrospinal meningitis, Asiatic cholera, yellow fever, typhus fever, smallpox, leprosy or bubonic plague or acute poliomyelitis may be disinterred upon a special permit granted by the State Board of Health when in session, but all such disinterments shall be done in strict conformity with the following requirements. The disinterment and removal must be under the direction of a licensed embalmer. The removal shall be done at an hour when there is the least possible exposure of other persons. No children shall be present, and only such persons as are actually necessary. The coffin shall not be opened, either at place of disinterment or place of destination. When the body is to be removed from the cemetery where disinterred, the coffin and remains must be inclosed in a metallic-lined box. The sexton and all other persons engaged in such removal shall immediately thereafter change their clothing and properly disinfect or burn the same, and shall thoroughly disinfect their hands, head and face. The embalmer authorized to conduct the disinterment shall be held personally responsible for the enforcement of these requirements.

Bodies dead from diseases other than named in rule 4 may be disinterred upon receipt of a written permit issued by the secretary of the State Board of Health, provided such permit is countersigned by the health officer of the local Board of Health.

All disinterments provided for in this chapter, shall be done under the personal supervision of a regularly licensed embalmer, and under no circumstance shall a permit for disinterment be issued unless his license and renewal is properly recorded in the office of the clerk of the local board of health in whose jurisdiction the disinterment is to take place, provided that when a disinterment is to be done outside the limits of an incorporated city or town, the embalmer's license need not be recorded with the township clerk, the record at the nearest city or town being deemed sufficient.

No permit is necessary to remove a body from any receiving vault for local burial, or where private conveyance is used.

Bodies dead of a non-contagious disease, placed in receiving vault for a period of over 30 days shall be hermetically sealed. Less than 30 days' time a sound box is necessary.

Bodies of any contagious disease shall be placed in a hermetically sealed case before being put in receiving vault.

Permit must be secured to remove a body from receiving vault that is to be sent by any common carrier.

A separate application must be made for each body to be disinterred.

See also Transportation Rules.

INTEREST—Legal rate 6 per cent.

TIME LIMITS FOR SUITS—Accounts, 5 years; notes, 10 years.

TRANSPORTATION RULES—Only embalmers holding a license issued or approved by the State Board of Health, as provided for by law, after examination, shall be recognized as competent to prepare bodies for shipment.

Rule 1 The transportation of bodies dead of smallpox or bubonic plague is absolutely prohibited.

Rule 2 Bodies dead of anthrax, Asiatic cholera, yellow fever, typhus fever, diphtheria, membranous croup, scarlet fever, scarlatina, scarlet rash, cerebrospinal meningitis, acute poliomyelitis, erysipelas, glanders or leprosy, may be accepted for transportation when prepared by being thoroughly disinfected by (a) arterial and cavity injection with an approved disinfecting fluid, (b) disinfecting and stopping all orifices with absorbent cotton, and (c) washing the body with the disinfecting fluid. After being disinfected as above, the body shall be enveloped in a layer of dry cotton not less than one inch thick, and completely wrapped in a sheet, securely fastened. It must then be placed in a metal-lined or an iron casket, all joints hermetically sealed, and all enclosed in a strong, tight, wooden box, or the body may be placed in the regular strong casket or coffin, and all placed in a metal-lined or all metal outside box, hermetically sealed. In shipment under this rule, the body must not be accompanied by persons or articles which have been exposed to the disease unless certified by the health officer as having been properly disinfected.

Rule 3 Bodies dead of typhoid fever, puerperal fever, tuberculosis, Spanish influenza, (influenza, la grippe, grip, epidemic catarrh, catarrhal fever, epidemic cold), pneumonia, chickenpox, whooping cough and measles may be received for transportation when prepared by arterial and cavity injection with an approved disinfecting fluid, washing the exterior of the body with the same, disinfecting and stopping all orifices, and enclosed in a sound casket and box. In all cases such bodies shall be prepared by a licensed embalmer holding a certificate as provided for in section 3 of the embalmers' law.

Rule 4 Bodies dead from any cause not stated in the above rules may be received for transportation when thoroughly disinfected by arterial injection, with cavity injection if necessary, and enclosed in a sound casket and box.

Rule 5. Every disinterred body shall be treated as infectious or dangerous to the public health, and shall be accepted for transportation when said removal has been approved by the state health authorities having jurisdiction where such body is disinterred. The coffin or casket containing the remains must be wrapped in a blanket thoroughly saturated with a 1 to 1,000 solution of corrosive sublimate and enclosed in a hermetically sealed metal lined or metal box. But bodies deposited in receiving vaults shall not be treated and considered the same as buried bodies, when originally prepared by a licensed embalmer, provided shipment takes place within 30 days from the time of death. After that time has elapsed, it shall be considered as a disinterred body. It is absolutely forbidden to open a casket where a disinterment has been made unless by order of court for the purpose of investigation.

Rule 6 The body must be accompanied by an escort provided with a passage ticket, another ticket for the body, marked "Corpse," and the transportation permit and embalmer's certificate properly filled out in duplicate. The original transit permit shall be handed to the escort, while the embalmer's certificate must be securely attached to the end or the top of the box. The entire duplicate copy must be left with the baggage agent at the original point of shipment. When the body is shipped by express, the embalmer's certificate is attached to the box in the same way, a duplicate copy is left with the express agent and the transit permit is attached to the waybill, and delivered with the body at destination. All wood coffin boxes must be provided with at least six handles, one at each end and two on each side.

IMPORTATION OF DEAD BODIES—Rule 1 The importation of bodies dead from either bubonic plague or smallpox, into the state of Iowa, is hereby absolutely prohibited by the Iowa State Board of Health.

DUTIES OF RAILWAYS AND EXPRESS COMPANIES, ETC.—Rule 2 Railroad companies and express companies and their agents, conductors, baggage agents, and messengers, and other transportation companies and private individuals are hereby forbidden to accept for shipment or to import into the state of Iowa, the dead body of any human being dead from any of the diseases named in Rule 1, stated above, and the aforementioned companies, their agents, conductors, and all other persons are hereby forbidden to import or bring into the state of Iowa any such bodies as are specified in Rule 3 and 4 which follow, unless the certificate attached to the outer box containing such body be in strict accordance with the provisions and requirements set forth herein.

REQUIREMENTS FOR SHIPMENTS OF BODIES DEAD FROM INFECTIOUS DISEASES—Rule 3 Section 1. In cases where the person has died from any of the following named diseases, viz., anthrax, Asiatic cholera, yellow fever, typhus fever, diphtheria, membranous croup, scarlet fever, scarlatina, scarlet rash, cerebrospinal meningitis, acute poliomyelitis, erysipelas, glanders or leprosy, the body may be accepted for shipment within the state, only when strictly complying with the following requirements, viz.:

1st. The body shall have been properly prepared in accordance with the requirements of this Board as set forth in Rule 2 as stated heretofore on page 14, Embalmer's Bulletin. Bodies dead of typhoid fever, puerperal fever, tuberculosis, Spanish influenza (influenza, la grippe, grip, epidemic catarrh, catarrhal fever, epidemic cold), pneumonia, chickenpox, whooping cough and measles, shall have been properly prepared in accordance with the requirements of this Board as set forth in Rule 3 as stated heretofore on Page 15, Embalmer's Bulletin

2nd The work of preparation shall have been done by a duly qualified embalmer legally authorized to practice embalming under the laws of the state or province in which the death occurred, or if there be no such legal requirement concerning the qualifications of embalmers in such state or province, then by an embalmer legally authorized and qualified under the laws of another state or province having similar requirements to those in Iowa. The term "embalming" as employed in these rules shall require the injection by a licensed embalmer of not less than ten (10) per cent of the body weight, injected arterially in addition to cavity injection, and twelve hours shall elapse between the time of embalming and the shipment of the body

3rd A certificate showing the cause of death, signed by the attending physician or coroner, and also a certificate, signed by the embalmer who prepared the body, showing method of preparation employed, shall be attached to the outer box containing the casket and remains. All certificates shall be made upon the official blank forms provided by the State Board of Health. The method used in preparation must be in strict conformity with the requirements of the Iowa State Board of Health

4th. Before shipment into the state of Iowa, permission to import the body shall be obtained from the Secretary of the Iowa State Board of Health, and such permit shall be attached to the end or top of the outside box containing the casket and remains.

5th. Notice of shipment shall be sent by telegraph, prepaid, to the health officer of the local board of health at the point of destination, stating the time at which the body may be expected to arrive

SHIPMENT OF BODIES DISINTERRED OUTSIDE OF IOWA—Rule 4. All bodies that have been buried and disinterred for shipment into this state shall be considered dangerous to the public health, and shall be subject to the requirements and provisions of Rules, 1, 2 and 3 stated above, and in addition thereto, the casket containing such body shall be enclosed in a hermetically sealed (soldered) zinc, tin or copper lined outer box

RESHIPMENT OF BODIES IN TRANSIT—Rule 5 Where a body has been held over in transit for a funeral service or other cause, before reaching final destination, reshipment can be made on the original transit permit attached to the box, the same as if transferred from one road to another, without making out new papers, provided the body is in good condition. Bodies not in good condition shall not be reshipped until said body has been prepared in accordance with the law and certified to by a licensed embalmer.

SHIPMENT OF BODIES FOR SCIENTIFIC PURPOSES—Rule 6 Section 1. All bodies to be used for scientific purposes shall be prepared for shipment under the direction of a licensed embalmer. Sufficient embalming fluid to insure preservation shall be injected without unnecessarily injuring the tissues, and all external orifices closed with absorbent cotton. A metallic-lined box should be used for shipment, but if such is not available, the body must be wrapped in oil cloth and enclosed in a tight shipping case. Neither ice nor fluid shall be placed in the container.

Section 2. No body dead from any contagious or infectious disease shall be shipped under the provisions of this rule. Bodies intended for scientific purposes, when properly prepared in accordance with this rule and shipped under authority of the secretary of the State Board of Health, shall be received by express companies and other common carriers for delivery to points within the state. The requirements of the State Board of Health relative to the certification of physician and permit of the local board of health shall not apply in the shipment of bodies to be used for scientific purposes when prepared and shipped under the provisions of this rule

Note.—This rule properly refers to bodies of deceased persons that are not claimed or identified by relatives or friends, and after the undertaker or coroner, who has charge of the unclaimed or unidentified body has made a sufficient search for relatives or friends to take charge of and bury the unclaimed or unidentified body, and failing in this, the undertaker or coroner who has charge of the unclaimed or unidentified body shall notify the secretary of the Iowa State Board of Health by telegram, prepaying the telegram, asking direction as to the proper disposal of the said unclaimed or unidentified body, and the secretary of the Iowa State Board of Health will reply by telegram or telephone, as may seem best, giving instructions as to the proper disposal of the body so unclaimed or unidentified, in which case all expenses must be paid from the place where the body is located, as the Iowa State Board of Health assumes no

expense whatever in the disposition of unclaimed or unidentified bodies. These unclaimed or unidentified bodies may be used for scientific purposes as may be directed by the secretary of the Iowa State Board of Health, and any medical school, scientific school, individual or individuals, who shall receive such an unclaimed or unidentified body for scientific purposes shall pay all reasonable expenses which have been incurred in the preparation and care of such body. This note is to be considered as full directions in regard to the procedure to be employed in communicating with the secretary of the Iowa State Board of Health relative to the disposal or disposition of unclaimed or unidentified bodies. When the secretary of the Iowa State Board of Health shall have been properly notified regarding the disposal of an unclaimed or unidentified body, then the said secretary shall give instructions as to the proper disposal or disposition of such body, and if the body is not needed for scientific purposes, then the secretary of the Iowa State Board of Health shall direct that the body be properly buried at public expense, and the bills or expenses, as the result of the death of the unclaimed or unidentified body, shall be properly certified to the County Board of Supervisors for audit and allowance as provided by law for the burial of the poor. These instructions should be carefully followed and special pasters and blank reports will be furnished from the office of the Iowa State Board of Health, giving directions for the shipment as regards all matters herein contained, and in each instance a full report must be furnished by the undertaker or coroner who has charge of any unclaimed or unidentified body, and said report must be mailed promptly to the secretary of the Iowa State Board of Health, and in this the undertaker or coroner must be careful to give all details and in each instance to see that all bodies are in proper condition for shipment, as complaints have been made regarding the improper preparation of such bodies which have been shipped heretofore.

KANSAS

CLAIMS AGAINST ESTATES—Funeral bills have priority over other claims.

CORONER LAW—The coroner shall hold inquests upon the dead bodies of such persons only as are supposed to have died by unlawful means, or the cause of whose death is unknown. When he has notice of the dead body of a person supposed to have died by unlawful means, the cause of whose death is unknown, found or being found in the county, it shall be his duty to summon, forthwith, six citizens of the county to appear before him at a time and place named. The coroner shall cause the body of a deceased person, which he is called to view, to be delivered to his friends, if any there be; but if not, he shall cause him to be decently buried, and the expenses to be paid from any property found with the body; or, if there be none, from the county treasury, by certifying an account of the expense, which, being presented to the board of county commissioners, shall be allowed by them if deemed reasonable, and paid as other claims on the county.

DEATH STATISTICS—State Board of Health supervises. Law substantially accords with paragraphs 1-5, 7, 8 of the form set forth as a basis for comparison in sections 17, 18 of the chapter on Death Statistics in Part I of this book. The law provides:

Section 5. That the body of any person whose death occurs in the state shall not be interred, deposited in a vault or tomb, cremated or otherwise disposed of, removed from or into any registration district until a permit for burial, removal or other disposition shall have been properly issued by the registrar of the registration district in which the death occurred. And no burial or removal permit shall be issued by any registrar until a complete and satisfactory certificate and return of the death has been filed with him as hereinbefore provided. But when a body is removed from a district into an adjacent or near-by district for interment, not requiring the use of a common carrier or the issuance of a removal permit, then the registrar's burial permit from the district where the death occurred may be accepted, provided, that a removal or transit permit issued in accordance with the law and health regulations of the place where the death occurred, whether in Kansas or outside of the state, shall be accepted by the local registrar of the district where the body is to be interred or finally disposed of, as a basis upon which he shall issue a local burial permit, in the same way as a death occurring in his district, but shall plainly enter upon the face of the copy of the record which he shall make for return to the state registrar the fact that it was a body shipped in for interment and give the actual place of death.

EMBALMERS' LICENSES—State Board of Embalming consists of three members appointed by the Governor, serving rotating three-year terms. Each appointment, except to fill a vacancy, to be made on nomination of three persons by the Kansas Funeral Directors' Association, if such nomination be seasonably made. Members must be residents of state and licensed embalmers with at least five years' experience in

the state Removable for neglect of duty, incompetency or improper conduct; \$5 per diem, not exceeding four days for each examination, and railroad fare allowed.

Annual meeting to be held same time and place as annual meeting of Association. Board to meet at least twice a year and oftener if proper discharge of duties so require.

One desiring to practice embalming shall make written application to the Board for a license, accompanying the same with a license fee for \$10; and appear before Board, at a time and place fixed by the Board; and if the Board shall find upon examination that the applicant is of good moral character, and possessed of skill and knowledge of said science of embalming and the care and disposition of the dead, and has reasonable knowledge of sanitation and of the disinfection of bodies of deceased persons and the apartments, clothing and bedding, in case of death from infectious or contagious diseases, the Board shall issue a license, and shall register applicant as a duly licensed embalmer. All persons receiving license under the provisions of this act shall register the fact at the office of the clerk of the county in the jurisdiction of which it is proposed to carry on said practice, and shall display said license in a conspicuous place in the office of said licentiate. Each applicant for a license must receive a mark of at least 75 per cent in a scale of 100 before a license shall be granted.

Unlawful for unlicensed person to practice or pretend to practice embalming or to prepare body for shipment.

Board and embalming schools have same privileges as to use of bodies as extended to medical schools.

BOARD RULES—Applications to be made on forms provided by Board, stating name, age, residence and place of business. If required affidavits of licensed embalmers must be furnished showing length of time employed under them and number of bodies under personal supervision of such embalmers, together with recommendation by physician and embalmer as to good character, etc. Applications to be filed at least 15 days before date of examination.

Applicants shall be at least 21 years of age; shall be actually engaged in the business as proprietor or employee, and have had three years actual experience in assisting in embalming and preparing dead human bodies, or furnish a certificate showing that the applicant has completed and passed a full and complete course of ten weeks schooling in a reputable school of embalming (approved by the Board) sworn to by the secretary or resident of said school, when it will only be necessary that the applicant shall have had two years' actual experience in assisting and preparing dead human bodies. Applicant shall have embalmed and prepared for burial or shipment at least 25 bodies, under the personal direction and supervision of a licensed embalmer. If applicant furnish a certificate showing that he has passed a grade of 75 per cent or more in a 26-weeks' continuous course in a reputable school of embalming approved by the Board, having at least 850 school hours devoted to the following subjects: Anatomy, physiology, chemistry, the principles and methods of embalming, bacteriology, public health and sanitation, laws and rules regulating the transportation of dead human bodies, funeral management, etc., and a practical experience from post mortem and embalming of at least 100 bodies, (the certificate to be sworn to by the president or secretary of such embalming school or college), it will only be necessary that applicant have six months' actual experience in assisting in preparing bodies. Applicants desiring to qualify under the last provision must register their entrance into the embalming school with the secretary of the Board. No correspondence course accepted.

Since July 1, 1921, it is necessary for those expecting to qualify as embalmers to register with the secretary of the Board as apprentice; fee, \$1. Registrant must be at least 18 years old and of good moral character, etc., and have entered upon study under a licensed embalmer.

Non-residents living along the border of the state and doing business therein may be licensed if qualified and if licensed in their own state.

Applicant must pass such examination as Board prescribes, covering the visceral anatomy of the body, the action and comparative value of germicides, embalming methods, health precautions in embalming, preparing and transporting bodies dead of infectious or contagious disease, meaning of infection and disinfection, and must demonstrate ability to properly raise and inject four or more of the principal arteries. He must also be conversant with laws and rules governing the transportation of dead bodies and any other topics named by Board. At least 200 written and 100 oral questions required to be answered.

Applicants failing to pass examination may be re-examined within one year without extra fee.

Licenses expire annually June 30, and are renewable on payment of \$2 fee. Revocable or denied for fraud, unprofessional conduct, violation of rules, etc. Provision made for notice and hearing on charges.

HEALTH REGULATIONS.—No public funeral shall be allowed, either at the house or church, where death occurs from smallpox, cholera, scarlet fever, diphtheria, epidemic cerebrospinal meningitis, or other infectious disease dangerous to the public health. Diphtheritic croup, croupous diphtheria, membranous croup, croup other than spasmodic, putrid fever, diphtheritic sore throat, and sloughing sore throat, occurring in communities where diphtheria is prevalent, shall be included among the diseases dangerous to the public health, and subject to the same precautions as diphtheria.

INTEREST—Legal rate, 6 per cent.

TIME LIMITS FOR SUITS—Accounts, 3 years; notes, 5 years

TRANSPORTATION REGULATIONS.—See Section 11 of Part I of this book.

KENTUCKY

CLAIMS AGAINST ESTATES—Burial expenses have priority over ordinary debts, ranking equally with administration expense and certain trust fund claims. The Court of Appeals has decided that a mortgage lien comes ahead of a funeral director's claim (43 Southwestern Reporter, 184). In another case it was decided that expense of lunch was a proper charge, but not expense of publishing cards of thanks (219 Southwestern Reporter, 187).

DEATH STATISTICS—State Board of Health supervises. Law substantially accords with Paragraphs 1-5, 7-9, of the standard form set forth as a basis for comparison in the chapter on Death Statistics in Part I of this book. The law provides that in case of death outside cities and incorporated towns the act shall not cause delay beyond a reasonable time in disposing of the body, unless the services of coroner or health officer is required, or unless the State Board of Health shall deem delay necessary. In such case the "undertaker" shall file with the local registrar a provisional death certificate, giving name, date and place of death and an agreement to furnish full certificate within five days.

EMBALMERS' AND "UNDERTAKERS'" LICENSES—State Board of Embalming consists of five members appointed by the Governor for rotating terms of four years on nominations made by Funeral Directors' Association. They must have at least five years' experience in embalming and the care and disposition of the dead, and are removable for neglect of duty, incompetency or improper conduct. Board meets yearly and oftener when duties require. All known embalmers and "undertakers" to be notified 15 days before examinations of time and place thereof.

Embalming licenses issued only to those at least 21 years old and who have practiced embalming for at least three years, or who have had at least three years' practical instruction in embalming and disinfecting under a licensed embalmer. Written application must be made to the Board, accompanied by \$10 fee. Applicant must be of good moral character and show on examination a reasonable knowledge of sanitation and disinfection. License must be registered with local Board of Health, or, where no such Board exists, with the clerk of town or county court, and must be conspicuously displayed in place of business.

"Every person desiring to engage in the business of undertaking shall make written application to the State Board of Embalming, accompanied by a license fee of \$10, containing the name, age and place of business of the applicant, the length of time and place or places where he has been employed as an assistant to an undertaker, name or names of such undertaker, showing that the applicant shall have served as an assistant to an undertaker, or been engaged in the business of an undertaker for at least two years in the aggregate, that he is of good moral character, 21 years of age or over, accompanied with proof of such facts, by affidavit or otherwise, as may be required by the Board, and if the Board shall find, upon due examination, that the applicant has a reasonable knowledge of sanitation and disinfection," and has complied with all rules and regulations of the Board relating to "undertakers," he shall be licensed to practice "undertaking." Licenses must be registered and displayed as in case of embalmers' licenses. At least one member of every firm and the manager of each place of business conducted by a corporation, desiring to practice "undertaking," must be a licensed "undertaker." No assistant, no member of such firm and no member of such a corporation shall engage in the care, preparation, disposal or burial of dead human bodies and the management of funerals, or shall discharge any of the duties of an "undertaker," unless he shall be a "licensed undertaker," etc.

"Undertakers'" and embalmers' licenses are renewable annually, terminating July 31. Renewal fee, \$2

Licenses revocable by Board for violation of rules for preparing, embalming, shipping or burying a body, or for mismanaging funerals

Person licensed in another state may secure a Kentucky license on payment of \$10

fee, and proof of license and examination in such other state, unless a resident of Kentucky when license was obtained in the other state.

Practicing without a license is a misdemeanor punishable by a fine of not less than \$100 for each offense.

BOARD REGULATIONS—Blank applications furnished by secretary

Applicant for embalmer's license must state his full name, age, residence, length of time engaged in embalming, or in receiving practical instruction with name of licensed embalmer or embalmers instructing him, and the names and addresses of a licensed embalmer or registered physician and a licensed "undertaker" who is a member of the state association for reference as to standing and moral character

Applicant for "undertaker's" license must state same facts, excepting that instead of statement as to embalming practice or instruction, he must state how long and where he has been employed as an assistant to an "undertaker," or how long he has practiced "undertaking."

When applicant cannot secure endorsements as above required other recommendations may be submitted as acceptable to Board. Applications must be sworn to and may be filed any time, but should be filed at least twenty days before examination meeting. Examinations held second Mondays of June and December. Applicant satisfactorily explaining failure to appear at examination or failing to pass may appear at either of next two examinations without further examination fee.

Applicant for embalmer's license must pass an examination on a grade of at least 75 per cent. Written examination covers cadaver or chart, and not less than sixty questions, covering anatomy of principal organs (15 questions), cavities (5 questions), arterial and cavity embalming (15 questions), bacteria and disinfection (6 questions), transportation rules (4 questions). Oral examination covers at least 25 questions, including embalming (15 questions), communicable diseases (4 questions), and disinfection (6 questions). Units of credits are allowed as follows. Successful eighth grade school course, one; successful high school course, two; successful college course, two; successful embalming school course, ten; for each correct answer to questions, one.

Applicant for "undertaker's" license must pass inquiry as to moral character, age, experience in "undertaking" business, and a written examination of not less than sixty questions, covering management of funerals (5 questions), sanitation and disinfection (15 questions), washing and laying out bodies (10 questions), contagious, infectious and communicable diseases (10 questions), rules and regulations for care and disposition of dead (10 questions), rules and regulations for burials (5 questions), transportation rules (5 questions). Oral examination of not less than 25 questions includes management of funerals (5 questions), sanitation and disinfection of premises and bodies dead of infectious, etc, diseases (10 questions), transportation rules (5 questions), rules pertaining to care and disposition of bodies. Examination must be passed by a grade of at least 75 per cent. Examination credits same as applies to embalmers, excepting that successful completion of recognized "undertaking" school course, instead of embalming school course, counts ten points.

Provision is specially made for renewing lapsed licenses. No right to practice pending renewal of license. No unlicensed person entitled to practice embalming, unless licensed embalmer is actually present during the entire operation, and embalming is done under his supervision. One not licensed "undertaker," or licensed embalmer connected with licensed "undertaker," shall not practice "undertaking" excepting in actual presence and under supervision of licensed "undertaker."

"Embalming" is given the usual definition of that term, as it appears in the chapter in Part I of this book on licensing of embalmers, which see. And "undertaking" is defined according to the meaning ascribed to that term in the same chapter relating to the regulation of the funeral director's profession. The law also defines "experience in undertaking" as applied to those who apply for a license on the strength of such experience, in line with the definition of that term given in the chapter last referred to.

Licenses are revocable for lack of good moral character, gross or wilful malpractice, violation of law or regulation, false certification of embalming, permitting unlicensed person to act as "undertaker," false statement in application for license or examination, etc.

HEALTH REGULATIONS—"Rule 56. *Duties of undertakers*. It shall be the duty of every undertaker taking charge of the preparation for burial of the body of any person to ascertain whether such person died of a communicable disease; and if such person died of Asiatic cholera, diphtheria, epidemic cerebrospinal meningitis, glanders, plague, scarlet fever, smallpox, or typhus fever, it shall be his duty to cause it immediately to be wrapped in a sheet saturated with disinfecting solution and promptly thereafter placed in a coffin or casket, which shall then be immediately and permanently closed. This regulation shall not be construed to prohibit the embalming of any such

body, but the undertaker shall cause such embalming to be done immediately upon taking charge of the body, except that, when a permit for embalming is required, this shall not proceed until the receipt of such permit. But immediately after the embalming he shall cause such body to be wrapped in a sheet and placed in a coffin or casket as hereinabove directed.

"After handling, embalming, or preparing for burial the body of a person dead of any of the communicable diseases enumerated in this regulation, such parts of the persons, garments, and utensils or other articles of the undertaker or his assistants as may have been liable to contamination with infective material shall be immediately cleansed or disinfected or sterilized in the manner prescribed by the rules and regulations of the State Board of Health.

"Rule 57 *Public funerals forbidden in certain cases*—A public or a church funeral shall not be held of any person who has died of diphtheria, measles, scarlet fever, small-pox, or typhus fever, unless the body is inclosed in a properly sealed casket, and the consent of the local health officer has first been obtained."

INTEREST—Legal rate, 6 per cent

MISCELLANEOUS PROVISIONS—Secret disinterments a punishable offense. Provision made for disinterring bodies on order of coroners, county judges and justices of the peace for post mortem where there is reasonable ground for believing that death was caused unlawfully. Customary provision for permitting dissection of unclaimed bodies by medical colleges.

TIME LIMITS FOR SUITS—Ordinary accounts, two years from first day of January succeeding date. Notes, 15 years, excepting those which have been negotiated before maturity.

TRANSPORTATION RULES—See Section 11 in Part I of this book.

LOUISIANA

CLAIMS AGAINST ESTATES—Funeral bills have priority over other claims but must be reasonable as to amount (not exceeding \$200) where the estate is insolvent.

DEATH STATISTICS—Law substantially accords with provisions set forth as standard in the chapter on Death Statistics in Part I of this book.

EMBALMERS' AND "UNDERTAKERS'" LICENSES—State Board of Embalming and Undertaking consists of five appointees of the Governor on recommendation of the president of the State Board of Health, from a list of names furnished by the Executive Committee of the Louisiana State Funeral Directors' Association. Rotating five-year terms. Two members must be licensed embalmers and three registered "undertakers," and each must have had at least five years' experience in his profession. Per diem salary and expenses not to exceed \$10. Board empowered "to prescribe a standard of efficiency of those who desire to practice embalming, and those who desire to engage or who are engaged in the business of undertaking in connection with the care and disposition of dead human bodies in this state. To meet at least once a year and oftener as the proper and efficient discharge of the duties may require. To adopt by-laws, rules and regulations, from time to time whereby the practice of embalming and the business of undertaking shall be regulated."

Unlicensed persons desiring license must apply in writing to Board, pay \$15 fee, and appear before Board. License issued on proof of good moral character and qualifications, and must be registered with State Board of Health and be conspicuously displayed in place of business.

Licenses expire December 31 and renewal fee of \$5 must be paid on or before January 31. Revocable for good cause.

At least one member of firm or corporation engaged in embalming or "undertaking," and the manager of each place of business conducted must be licensed embalmer or "undertaker." Every member or assistant engaged in caring, etc., for bodies must be licensed. Practicing embalming or engaging in "undertaking" without license punishable by \$50-\$100 fine, in default of which offender may be imprisoned 30 to 90 days.

BOARD RULES—Applications to be made on forms provided by Board. Contents substantially same as required in Kentucky. Applicant must be at least 21 years old and of good moral character. Applicant for embalmer's license must have been engaged in embalming for at least three years or had at least three years' instruction in embalming and disinfecting under a certified embalmer, or six months' such experience and a diploma from a recognized embalming school. Applicant for "undertaker's" license must have been engaged in "undertaking" for himself or as assistant, for at least six months.

Examinations on second Tuesday in January and July. Special examination when

called. Applicant failing to appear may appear at next examination. On failing to pass may be re-examined without further fee within two years.

Correspondence courses not accepted.

Scope of examinations substantially same as in Kentucky

Having book, etc., in possession during examination cause for ejection.

Those licensed in other jurisdictions may be admitted without examination on proper showing, unless when so licensed applicant resided in Louisiana

Other provisions defining embalming, "undertaking," etc., and providing for revoking licenses, etc., substantially the same as those of Kentucky

INTEREST—Legal rate, 5 per cent.

MISCELLANEOUS REGULATIONS.—It shall be unlawful hereafter for any person or corporation to bury any human body within the limits of an incorporated city or town anywhere outside of a duly authorized public cemetery

TIME LIMITS FOR SUITS.—Accounts, 3 years; notes, 5 years

TRANSPORTATION RULES.—For reference to additional local regulations, see Section 11 in Part I of this book.

MAINE

CLAIMS AGAINST ESTATES.—Funeral bills and expenses of administration have priority over other debts of estate

DEATH STATISTICS AND TRANSPORTATION REGULATIONS.—Secretary of State Board of Health is registrar of Vital Statistics, and as such has supervision over registration of deaths, etc. The record of death shall state its date, the full Christian and surname of the deceased, the sex, color, condition, whether single or married, age, occupation, place of birth, place of death, the full Christian and surnames and birthplaces of parents, and the disease or other cause of death, so far as known. On death of stillbirth, the "undertaker," town clerk or other person superintending the burial, shall obtain physician's certificate; and add the facts required in the death certificate; and having signed the same, forward it to the clerk of the town or city where the death occurred and obtain burial permit. In case of contagious or infectious disease, the certificate shall be forwarded immediately. Where there was no attending physician the town clerk may issue burial permit on presentation of such facts as may be obtained from relatives, etc. Under section 24 of Vital Statistics Law, burial permit need not be obtained when impracticable to obtain it within reasonable time after death, but certificate shall be obtained as soon as practicable after death. No body dead of cholera, yellow fever, diphtheria, scarlet fever, typhus fever, typhoid fever, smallpox or other pestilential disease, shall be removed from place to place in this state by any railroad, steamboat or other common carrier, unless there shall be attached to the outer case in which said body is enclosed, a certificate from the board of health where such person died, stating the disease causing such death, and that necessary precautions against infection satisfactory to said board have been observed. A certificate of death giving heart failure as the only cause of death, shall not be deemed sufficient upon which to issue a burial permit, and such certificate must be returned to the physician who made it for the proper correction and definition. If the body of a deceased person is brought into this state from without for burial, and if it is accompanied by a permit issued by the legally constituted authorities of the state from which it was brought, such permit shall be received as sufficient authority upon which the clerk of the town in which said body is to be buried shall issue a permit for burial; but if it is not accompanied by such permit, then the person or persons in charge of it shall apply for a burial permit to the clerk of the town in which it is to be buried, and the clerk of the town shall issue such permit when furnished with satisfactory information

For reference to additional local regulations, see Section 11 in Part I of this book.

When a birth, marriage or death occurs in an unincorporated place, it shall be reported to the town clerk in the town which is nearest to the place at which the birth, marriage or death took place, and shall be recorded by the town clerk to whom the report is made; and all such reports and records shall be made and recorded and returned to the state registrar as is provided herein

Except as provided in section 24, no interment or disinterment of the dead body of any human being, or disposition thereof in any tomb, vault or cemetery, shall be made without a permit as aforesaid, from the clerk of the town or city where said person died, or in case of disinterment, is buried, nor otherwise than in accordance with such permit. No "undertaker" or other person shall assist in, assent to, or allow any such interment or disinterment to be made, except as provided in section 24, until such permit has been given as aforesaid; and every "undertaker" or other person having

charge of any burial place as aforesaid, who shall receive such permit, shall preserve and return the same to the clerk of the town in which the death occurred within six days after the day of burial

EMBALMERS' AND "UNDERTAKERS'" LICENSES—Applicant must be at least 21 years old with not less than a grammar school education, and shall have practiced embalming at least, or shall have had at least one month's practical instruction in embalming and disinfecting under a licensed embalmer; and shall have an intelligent comprehension of the rudiments of anatomy, and of the characteristics and dangers of contagious and infectious diseases, and of the actions of disinfectants; and pass an examination. Board of Examiners consist of Secretary of State Board of Health, member of that Board, and two practical "undertakers" and embalmers appointed by the Governor with the advice and consent of the council, holding three-year terms.

Examinations twice a year at such times and places as Board fixes, and contain such questions on embalming and disinfecting as Board may determine. Licenses revocable for cause, including violation of law or regulations. Examination fee, \$5; renewal fee, \$1; revival and renewal fee, \$2. Licenses expire December 31. Application for renewal to be made within preceding 30 days. Application for revival and renewal, within 30 days after December 31. Holders of licenses to be notified within ten days of expiration and be furnished with blanks. Violations punishable by \$10-\$50 fine and/or 10 to 60 days' imprisonment.

INTEREST—Legal rate, 6 per cent

TIME LIMITS ON SUITS—Accounts, 6 years, simple notes, 6 years; witnessed notes, 20 years

OFFENSES AGAINST BODY—Punishable for officer to take body under writ or execution

TOLL BRIDGES—Free to persons going to and from funeral

MARYLAND

CLAIMS AGAINST ESTATES—Funeral expenses, to be allowed at the discretion of the court according to the condition and circumstances of the deceased, not exceeding \$300 take priority over other claims

DEATH STATISTICS AND TRANSPORTATION RULES—Secretary of State Board of Health is State Registrar of Vital Statistics. "No sexton or person in charge of any premises in which interments are made shall inter or permit the interment or other disposition of any body unless it is accompanied by a burial permit, as provided in this Act. He shall also keep a record of all interments made in the premises under his charge, stating the name of the deceased person, place of death, date of burial and name and address of the undertaker." Stillbirths are registerable both as births and deaths

No body is to be entombed, cremated, transported, interred or otherwise disposed of without permit from local registrar. Certificate of death to be filled out and signed by physician last in attendance upon decedent within 24 hours after death, excepting where body is viewed by the coroner and an inquest is held, when certificate of death shall be filled out and signed by coroner. "In case of death without medical attendance or in case of sudden or violent death in which the coroner does not deem it necessary to hold an inquest, the certificate of death shall be executed and signed by the local registrar or deputy local registrar from the best information available, and all such certificates of death shall be presented to the undertaker or other person authorized to make disposition of the body. No person whose duty it is under the provisions of this Act to make out and sign a certificate of death shall make out and sign more than one certificate of death, except those authorized to do so under the provisions of this Act. In all cases of death from smallpox, yellow fever, diphtheria, scarlet fever or other contagious or infectious disease dangerous to public health, the interment shall be conducted according to the rules of the State Board of Health

"The transportation of the body of any deceased person from one district to another district, or from one country into another country, or from this State into any other State, Territory or District of Columbia, or from this State to any foreign country, or the transportation of any dead body from any other State, Territory or District of Columbia into this State or any foreign country into this State, shall be under such rules and regulations as the State Board of Health shall prescribe"

Transit permits shall only be issued by application to the local registrar or deputy local registrar upon the presentation of a proper and complete certificate of death or an application for a disinterment permit. The same to be accompanied by a burial permit which shall be full and legal authority for interment or other disposition in any part of the State. The burial permit issued authorizes interment in any part of State

In the event of the death of any person without the jurisdiction of the United

States, or in the event of the death of a person within the jurisdiction of any of the United States, where such death is not recorded by the authorities having jurisdiction, a burial permit may be issued by the local registrar or deputy local registrar at the place to which such body is conveyed in this State upon presentation of a proper and correct certificate of death

Application for a permit to disinter a human body shall be made to the local registrar or deputy local registrar for a disinterment permit on the form prescribed by the State Registrar. No disinterment permit shall be issued where death was caused by infectious disease within one year, except by permission of and under the direction of the State Registrar of Vital Statistics

"Undertakers" and other persons knowing facts are bound to furnish such information as may be demanded by State Registrar concerning deaths, etc

Attending physician refusing to deliver death certificate subject to \$50-\$200 fine
"Undertaker" interring, removing body, etc., without permit subject to \$20-\$100 fine.
Other penalties provided for other violations of act

The record of a death shall state the date and place of its occurrence, name, age, sex, color, occupation, condition, birthplace, cause of death, duration of illness, and names, residences, birthplace of parents, name and address of the attending physician and such other items of information as the State Registrar of Vital Statistics shall deem important or necessary subject to the approval of the State Board of Health. All such records shall be made upon forms prepared and printed by the State Registrar of Vital Statistics and distributed by him for this purpose. All records of birth or death shall be plainly written in unfading ink and shall be signed by the person required to make the record in his own handwriting. And no certificate shall be held to be complete or correct that does not supply all of the items of information called for under the provisions of this section so far as it is possible to obtain the same. And if such items cannot be obtained by proper and diligent inquiry and search, the word "unknown" shall be entered after each item so described

See also Section 11, in Part I of this book

HEALTH REGULATIONS--Every owner or driver of a public conveyance shall immediately provide for the disinfection of such conveyance in a manner approved by the local health authority, after it has conveyed a body dead from a dangerous infectious disorder. Penalty. Fine not exceeding \$25. When such a body is retained in a room where persons live or sleep, or when any body is in such state as to endanger the health of inmates of the house, any health officer or justice of the peace may, on a certificate signed by a qualified medical practitioner or the application of three persons living in the neighborhood, or the body to be removed and buried at the cost of the city, town or county within a time to be limited by such order, and unless the friends or relatives of the deceased undertake to bury the body within the time so limited, and do bury the same, it shall be the duty of the health officer or Justice of the Peace to have the body buried at the expense of the city, town or county, and any person obstructing execution of such order shall be liable to a fine of not more than \$200 or imprisonment not exceeding six months

INTEREST--Legal rate 6%

STATE SCHOOL FOR INSTRUCTION--An act of the Legislature empowers the State Board of Undertakers "to establish a school of instruction in which shall be taught the work of practical embalming and undertaking, and for the dissemination of reasonable knowledge of sanitation, preservation of the dead, disinfecting the bodies of deceased persons, the apartment, clothing and bedding in cases of death resulting from infectious or contagious diseases," and to establish all rules and regulations for the conduct of said school, the payment of tuition fees, the admission of pupils, and the issue of diplomas to graduates therefrom

TIME LIMITS ON SUITS--Accounts, 3 years; simple notes, 3 years; sealed notes, 12 years

UNDERTAKERS' LICENSES--State Board of Undertakers consists of ten members--the Secretary of the State Board of Health, the Commissioner and Assistant Commissioner of Health of Baltimore, and seven experienced "undertakers" appointed by the Governor to hold office until their successors are appointed and qualify. Five of the seven must reside in Baltimore and the other two outside that city. Members receive no salary but Secretary may receive not more than \$500 a year, and members entitled to actual traveling and other necessary expenses

Before any unlicensed person, partnership or corporation shall engage in the business of "undertaking" and before any member of such partnership, assistant or employee of any such person, partnership or corporation, or officer of such corporation whose duties will engage him or her in the care, preparation, disposition or burial of the dead, shall discharge the duties of such business, employment or office, applica-

tion shall be made to the Board for a license. If the Board finds upon due examination that the applicant is of good moral character, possessed of skill and knowledge of the business, and has a reasonable knowledge of sanitation, preservation of the dead, disinfecting bodies, clothing, apartments, etc., license shall issue on payment of \$20 fee. License may issue to corporation and one license may issue to partnership in firm name. License to be registered with local Board of Health and conspicuously posted in place of business. Licenses expire annually on April 30 and are renewable on payment of \$5 fee. Violations of act (including act of person in charge of cemetery in permitting unlicensed "undertaker," assistant or employee to deliver body for burial, etc.) punishable by fine of not more than \$10 and/or imprisonment for not more than one year.

BOARD RULES—Applications for examinations must be filed at least ten days before regular March meeting of Board. Board may grant special examination, requiring applicant to bear the expense thereof. Written examination before two or more members of the Board. Body is provided for practical demonstration before a majority of the members of the Board, testing applicant's knowledge and skill.

Applications for renewal of licenses to be made at least 15 days prior to May 1. In applying for renewal employer or principal must give names and number of all licensed "undertakers" in their employ whose duties involve them in embalming or otherwise caring for the dead. Applying employees and assistants must give names and addresses of their employers. Old licenses must be surrendered on delivery of new.

Provision made for suspending or revoking licenses for making false statements in application for examination or renewal, or for misuse of license, etc.

See chapter on Licensing of Funeral Directors and Embalmers in Part I of this book.

MASSACHUSETTS

CLAIMS AGAINST ESTATES.—Funeral bills have priority over other demands against estate.

CORONER LAW—"No embalming fluid, or any substitute therefor, shall be injected into a body . . . supposed to have come to death by violence, until a permit in writing, signed by the medical examiner, has been obtained."

CREMATION, TRANSPORTATION AND BURIAL PERMITS, ETC—Body not to be cremated within 48 hours after death unless death caused by contagious or infectious disease, and shall not be received or cremated by cremating corporation until certificate issues from medical examiner.

No "undertaker" or other person shall bury body in a city or town, or disinter, except as provided in next paragraph, until permit received. Permit also required to exhume and remove body from city or town. No such permit issues until proper statement filed. Certificate to be made by physician, except where death caused by violence, in which case medical examiner makes same.

"No undertaker or other person shall bury in a city or town a body or the ashes thereof which have been brought into the Commonwealth until he has received a permit so to do from the Board of Health or its agent appointed to issue such permits, or if there is no such board, from the Clerk of the city or town in which the body is to be buried or the funeral is to be held, or from a person appointed to have the care of the cemetery or burial ground in which the interment is made, if a record is kept of the names of all persons buried therein, or from a duly appointed superintendent of burials in such city or town who keeps a record of interments. Such permit shall not be issued until the undertaker or other person has delivered a certificate to said board, agent, clerk, superintendent or person having such care, giving the name of the deceased, his age as nearly as can be ascertained, the cause of death, the name of the city or town in which he last resided or from which the body was brought, or, if the death occurred at sea, the name of the vessel upon which it occurred, and any other facts required for record which could be obtained with reasonable exertion. The Board of Health or its agents, or the superintendent or person having such care, shall, upon receipt of such certificate, forthwith countersign and transmit it to the city or town clerk, and if the deceased was a resident of said city or town, the clerk shall record the same in the books kept for recording deaths; but if the deceased was at the time of his death a resident of any other city or town within the Commonwealth said clerk shall forthwith forward to the clerk thereof a copy of such certificate, who shall record the same.

"No person having the care of a cemetery or burial ground shall permit a human body to be buried therein, or such body or the ashes thereof to be removed therefrom, until the permit for such burial or removal has been delivered to him, nor permit the ashes of a human body to be buried therein until there has been delivered to him a

certificate that the burial permit and the certificate of the medical examiner prerequisite to the cremating of said body have been duly presented.

"An undertaker shall not bury the ashes of a human body until he has received from the person having the charge of the crematory a certificate that the burial permit and the certificate of the medical examiner prerequisite to the cremating of said body have been duly presented

"Whoever violates any of the provisions of the four preceding sections shall forfeit not more than \$50

"No common carrier or other person shall convey or cause to be conveyed, through or from any city or town in the Commonwealth, the body of any person who has died of smallpox, scarlet fever, diphtheria or typhus fever until such body has been so encased and prepared as to preclude any danger of contagion or infection by its transportation, and no city or town clerk, or clerk or agent of the board of health, shall give a permit for the removal of such body until he has received from the board of health of the city or from the selectmen of the town in which the death occurred a certificate stating the cause of death, and that said body has been prepared in the manner prescribed in this section, which certificate shall be delivered to the agent or person who receives the body. Whoever violates the provisions of this section shall forfeit not more than \$25.

"The boards of health of cities and towns shall annually, on or before the first day of May, license a suitable number of undertakers who can read and write the English language. Such license shall be issued upon such terms and conditions as the board of health may prescribe, and may be revoked at any time by the board if its terms or conditions or any requirements of law relative thereto have been violated by the undertaker. An undertaker who has been so licensed may act in any city or town."

Contagious diseases: Bubonic plague, typhus fever, measles, whooping cough, scarlet fever and scarlatina

Infectious diseases: Cerebro-spinal meningitis, yellow fever, typhoid fever, Asiatic cholera, tuberculosis, consumption, croupous pneumonia, influenza, leprosy, tetanus (lock-jaw), anthrax (carbuncles), glanders, mumps, relapsing fever, rabies (hydrophobia), syphilis and gonorrhea.

Contagious and infectious diseases: Diphtheria, bubonic plague, glanders, smallpox, measles and rubioli rothein (German measles)

The bodies of all persons who die in Massachusetts, that are to be shipped by public conveyance, even though the initial point of such shipment be a railway station outside the State, must be prepared and forwarded in accordance with the regulations in force in the State of Massachusetts

For reference to additional local regulations, see Section 11 in Part I of this book.

DEATH STATISTICS.—Town clerk required to keep death records, showing date of death, name of deceased, sex, color, whether single, widowed, married or divorced, age, residence, occupation, place of death, place of birth, names and places of birth of parents, maiden name of mother, disease or cause of death, place of burial, name of cemetery, maiden name of deceased, if married or divorced woman, and name of husband. Every householder in whose house death occurs must, within five days, notify Board of Health. Attending physicians, etc., must on request of "undertaker," etc., furnish for registration standard certificate of death. "Undertaker" or person in charge of funeral must obtain physician's certificate, complete it by stating the facts required to be reported, and return to Board of Health. Entitled to 25c fee. Mistakes in records may be corrected by affidavit, but willfully false returns subject one to a fine of not more than \$50.

DISTURBING FUNERALS.—One who willfully interrupts or by fast driving or otherwise in any way disturbs a funeral assembly or procession is punishable by a fine of not more than \$50 or not more than one month's imprisonment.

EMBALMERS' AND "UNDERTAKERS'" LICENSES.—Board of registration in Embalming consists of three members appointed by Governor. Members must be skilled embalmers with five years of practical experience. Three year terms. Not more than one member from same city or town. Members removable by Governor and Council for cause. Meetings, first Tuesday in January, May and October, and additional meetings as may be called. Members entitled to \$100 annual salary and actual expenses

Unregistered persons desiring certificate entitled to examination on paying \$5 fee. Re-examination fee, \$3. Renewal fee, \$2. \$10 additional fee for renewal within ten days after lapse of proper time for paying \$2 fee.

Board empowered to make rules "governing the care and disposition of human dead bodies and the business of embalming," and may expend out of fees received not more than \$500 "for purposes of instruction, and for the dissemination of new

and useful knowledge among and for the benefit of licensed embalmers of the Commonwealth."

Certificates of registration must be conspicuously displayed in place of business.

Practice by unregistered person punishable by fine of not more than \$100 and/or not more than two months' imprisonment

BOARD RULES.—Application for registration must be signed by two reputable persons residing in same town as applicant, certifying to his good moral character and common school education. Application to be filled out on Board form by applicant in own handwriting and be signed and sworn to by him. To be filed at least four days before date of examination. 75% of answers on examination must be correct. Examinations held in Boston on the first Wednesday of March and October. Additional examinations as determined.

Certificate to be framed and hung on wall

Renewals to be made before the first of December. Failure to renew within ten days requires re-examination before certificate may be renewed. Board must notify registrant within two days after he becomes delinquent.

Certificates may be refused for false and fraudulent representations, unprofessional or dishonorable conduct, or violation of health rules.

"Boards of Health shall annually, on or before May first license a suitable number of undertakers who can read and write the English language. Such license shall be issued upon such terms and conditions as the Board of Health may prescribe, and may be revoked at any time by the Board if its terms or conditions or any requirements of law relative thereto have been violated by the undertaker. An undertaker so licensed may act in any town." (See chapter in Part I on licensing of embalmers and funeral directors for a reference to a decision of the Massachusetts Supreme Judicial Court as to the power of Boards under this statute.)

INTEREST—Legal rate 6%

LEGAL PROCESS AGAINST BODIES—Sheriff, etc., taking body on legal process subject to fine of not more than \$500 or imprisonment for not more than six months.

NARCOTIC DRUG ACT—Registered embalmers and manufacturers of or dealers in embalming supplies are among those exempted from a statutory prohibition against possession of hypodermic syringes, hypodermic needles and other instruments adapted for use of narcotic drugs by subcutaneous injection.

TIME LIMITS ON SUITS.—Accounts and simple notes, 6 years; notes under seal, 20 years.

MICHIGAN

CLAIMS AGAINST ESTATES—Funeral bills have priority over other claims, excepting expenses of administration. May be allowed any time before the general hearing of claims on five days' notice.

DEATH STATISTICS.—State Commissioner of Health supervises compilation and preservation. The law provides that the body of no person whose death occurs in the state shall be interred, deposited in a vault or tomb or otherwise disposed of, or removed from the township, village or city in which the death occurred, until a permit for burial or removal shall have been properly issued by the clerk of the township, village or city in which the death occurs, who shall be the registrar of deaths. In cities that have, or shall institute, a system of immediate registration of deaths by the board of health, the health officer or secretary of the board of health shall act as registrar of deaths under this act, in lieu of the city clerk.

"Whenever any person shall die, the undertaker, householder, relative, friend, manager of institution, sexton or other person superintending the burial" shall cause a certificate of death to be filled out with all of the personal and family particulars required in section 3, and attested by the signature of a relative or some competent person acquainted with the facts. In case of death without the attendance of a physician, or it shall appear probable that the deceased person came to his death by unlawful or suspicious means, then the registrar shall refer the certificate to the health officer or coroner for immediate investigation and report prior to issuing the permit. In deaths from dangerous communicable diseases, burial or removal permits shall be granted by the registrar only in accordance with the rules of the local board of health and of the state board of health relating thereto. "The sexton or other person having charge of the interment or final disposition of the body shall retain the burial permit when presented to him by the undertaker. Provided, That when a body is shipped the removal permit shall be presented by the undertaker or other person shipping the same to the agent of the transportation company, and shall be attached by him, with the transit permit, to the box containing the body, to accompany the same to destination, and no transit permit

shall be issued or received by any transportation company for the shipment of a body unless accompanied by the registrar's removal permit"

The death certificate follows the form set forth in the chapter on Death Statistics in Part I of this book.

"Any official failing or refusing to perform his duty under this act, or any undertaker violating any of its provisions, and any person who shall knowingly bury, or assist in burying or otherwise disposing of any deceased person without there shall first have been obtained a burial permit in compliance with the provisions of this act, shall, upon conviction thereof, be deemed guilty of a misdemeanor, and shall be punished by a fine of not exceeding \$100 or be imprisoned in the county jail not exceeding 30 days, or suffer both fine and imprisonment"

Any embalmer duly licensed by the State Board of Health may apply to the State Commissioner of Health, accompanied by a fee of one dollar, for permission to act as subregistrar of deaths.

The State Commissioner of Health in his discretion, may authorize any licensed embalmer to act as subregistrar of deaths, in which capacity he shall be authorized to issue burial permits to himself for deaths occurring in any township or village (but not city) in the state under the same restrictions as those governing registrars. He shall sign as "Licensed Embalmer, No" stating the number of his license. He shall not issue a permit to himself, or conduct a funeral, until he shall have obtained the certificate of death, properly filled out in all respects required by the registration law, legibly and correctly in ink. He shall personally file all certificates of death upon which he has issued permits to himself with the registrars of the townships or villages in which the deaths occurred on or before the third day of the month following that in which the death occurred, and failure to do so or to comply strictly with this act shall warrant the immediate cancellation of his authority as subregistrar by the secretary of state. An embalmer whose license is revoked by the state board of health shall thereby become disqualified as a subregistrar of deaths. Subregistrars shall receive no fees or other compensation for issuing burial or removal permits or transit permits to themselves, or for transmitting certificates of death to the township or village clerks under this act, but the regular registrars shall receive the usual compensation for such certificates when promptly transmitted under the registration law.

EMBALMERS' LICENSES.—The State Board of Health is empowered to determine the qualifications necessary to enable one to lawfully embalm and disinfect premises. Examinations by Board or member thereof. Embalming by unlicensed person forbidden. "All persons who are engaged in the business of undertaking, embalming or funeral directing, or who profess to be engaged in such business . . . shall be required to possess a certificate showing that they are licensed embalmers." One violates the law if he embalms or cares for a body, or attempts to do so, unless he does so under the immediate and personal direction of a licensed embalmer. "Embalming" is defined in accordance with the definition given in the chapter on Embalmers' Licenses in Part I of this book. But it is provided that the act shall not apply "to any person who prepares dead human bodies for burial without the assistance of an undertaker or embalmer, or without acting in the capacity of an embalmer or undertaker"

Examinations are to be held at least once a year in Lansing, and may be held at other times and places. At least one examination must be held in the Upper Peninsula if there are five or more applicants for examination from that section. Members of Board, excepting the Secretary, who attend the examinations are entitled to \$10 per day and actual expenses.

No person shall be granted a license unless he shall have had at least two years actual, practical instruction in embalming and disinfecting under a licensed embalmer in this state, or at least one year of such instruction and has completed a course in some school of embalming whose standing is recognized by the State Board of Health, or who shall have been actively engaged in the practice of embalming for five years last past prior to the date of his examination. Each applicant for a license shall be examined orally and in writing in the following subjects: Anatomy, sanitary science and disinfection, the care, preservation, embalming, transportation and burial of dead human bodies, and shall, at the request of the Board, demonstrate his proficiency as an embalmer, by operation on a cadaver. All applications shall be upon blanks furnished by the Board and shall be accompanied by a fee of \$10 and a photograph of the applicant. All applicants for license to practice embalming shall have attained the age of 21 years and must furnish a certificate of good moral character, signed by three responsible citizens, who have been personally acquainted with the applicant for at least one year. Any person holding a valid, unrevoked, and unexpired license in another state or territory having substantially similar requirements to those existing in

this state, provided that such states or territories recognize licenses issued by the Michigan State Board of Health, may be granted a license to practice upon filing with the secretary a certified statement from the secretary of the examining board of the state or territory in which the applicant holds a license, showing the rating upon which said license was granted, together with his recommendation, and if satisfactory to this Board it shall, upon receipt of a fee of \$25 grant such license. The owner of any license or renewal shall cause a copy to be filed with the local registrar of each city or village wherein he intends to practice, and no transportation permit shall be issued by the local registrar to any person who has not a copy of such license or renewal on file. Provided, that any local registrar is hereby authorized to grant a transportation permit to any embalmer coming from beyond the jurisdiction of said registrar upon the exhibition of a copy of said license or renewal to said registrar. All persons who, prior to July 1, 1925, apply for a license under this act shall furnish the Board satisfactory evidence of their proficiency in a common school education. All licenses and renewals thereof shall expire and terminate the thirty-first day of July following the date of their issue, unless sooner revoked and cancelled.

Any person holding an embalmer's license may have the same renewed by filing with the secretary of the Board an application therefor within 30 days preceding the expiration of his license, upon blanks prescribed by the Board and upon payment of \$2.50 renewal fees. Provided, however, that any person neglecting or failing to have his license renewed as above may have the same renewed by making application therefor during the month of August following, and upon payment of \$10 revival and renewal fees.

Every September the secretary of the Board shall supply each licensed embalmer and the various transportation companies in state with a list of licensed embalmers. Notice of failure to renew licenses to be given holders.

Whenever the Board shall have reason to believe that any person to whom a license has been issued has become unfitted to practice embalming and disinfecting, or has violated any of the provisions of this act, or any rule or regulation prescribed, or whenever written complaint of a licensed embalmer, substantiated by affidavits thereto, charging the holder of an embalmer's license with the violation of any provision to this act is filed with said board, it shall be the duty of the board to notify the person in question by registered mail or personal service. When a written complaint is filed with the Board either by a member thereof or a licensed embalmer, a copy shall be attached to the notice. The notice shall set forth in what particulars it is claimed there has been a violation of the law, or for what reason the person is believed to be unfitted to longer prosecute the business of an embalmer. The Board shall in such notice definitely fix a time and place when and where it will be in session to consider the case, which time shall not be less than twelve days after the service of notice upon the person. Such person shall have the right to appear at such time and place to dispute the charges.

Any person who shall violate any of the provisions of this act shall upon conviction thereof, be punished by a fine of not more than \$300, or by imprisonment for not more than one year, or by both such fine and imprisonment, in the discretion of the court. It is hereby made the duty of all prosecuting attorneys to see that the provisions of this act are enforced in their respective counties. It shall also be the duty of all health officers in their respective cities and townships to inform against and assist in the prosecution of all persons who there is reasonable cause to believe are guilty of violating any of the provisions of this act.

A notice of a recent examination to be held at Lansing specified:

Candidates will be required to take both WRITTEN and ORAL examinations with demonstrations on the cadaver. Oral examinations will be given in the order applications are received. Some of the general subjects included in the written examination are:

- (a) Visceral anatomy and circulation of the human body, both arterial venous.
- (b) Nature, action, modes of action and comparative value of disinfection.
- (c) Methods of embalming and preparing bodies for transportation, also shipping rules.
- (d) How diseases are spread, the best method for the restriction of diseases, and bacteriology in relation to the spread of diseases.
- (e) The sign of death and manner in which it is determined.

Those who desire to take the examination at this time must fill and return to the State Commissioner of Health the proper application blank, with an unmounted photograph of the applicant signed in ink on the back and properly certified to by a notary. A fee of \$10.00 must accompany the application. Remittance may be made by express or post-office money order or by registered letter. Personal checks cannot be used.

Applications should be on file in this office ten days before the date of examination. Application must be made in the name of the individual and not a firm. Applicant's name must be signed in full. Applicants must have at least an eighth grade education.

or its equivalent and two full years of practical instruction in embalming and disinfecting under a licensed embalmer in this state, or one year of such instruction and a diploma from an accredited school of embalming, showing that the applicant has completed a six months' course in said school. No part-time services will be considered. Applicant must also be a registered apprentice. In the examination a rating of at least seventy-five per cent must be made by the applicant to secure a license.

APPRENTICE EMBALMERS—The Michigan law relating to the licensing of embalmers and funeral directors was so amended by Public Acts, 1923, p. 358, as to provide as follows. "Any person who has completed ten grades in the public schools of the state, or its equivalent, may enter the employ of a licensed embalmer as an apprentice," and "shall forthwith apply to the state board of health for registration as an apprentice," stating "his name, age, place of birth, the date his apprenticeship commenced; the name and place of business of the embalmer whose service he has entered, and shall be accompanied by an affidavit from such embalmer, showing the correctness of the statements contained in the application, and a fee of \$1 If at any time thereafter such apprentice leave the employ of the licensed embalmer whose service he has entered, it shall be the duty of the . . . embalmer to give . . . apprentice an affidavit showing the length of time he has served . . . with him, which affidavit shall be filed with the state board of health . . . and if such apprentice shall thereafter enter the employ of another embalmer in the state . . . , he shall forthwith report such employment to the state board of health. . . . Before such apprentice shall be eligible to receive a license to practice embalming, he shall exhibit, in connection with the other evidence required by this act, affidavits from the several licensed embalmers under whom he shall have worked, showing that he has embalmed for burial or shipment at least 50 bodies during his apprenticeship. This work must all have been done within four years from the date of registration as an apprentice. . . . In all applications of apprentices for licenses as an embalmer . . . the eligibility of the applicant shall be determined by the records . . . of the state board of health: Provided the educational qualifications above provided shall not become operative until July 1, 1925."

FUNERAL PROCESSIONS—A model for a state law or ordinance giving funeral processions right of way over other vehicles is to be found in the following provisions of Michigan Public Acts, 1923, p. 332:

"Motor vehicles forming a funeral procession when going to any place of burial shall have the right of way over all other vehicles except fire apparatus, ambulances and police patrol vehicles, at any street or highway intersection within this state.

"It shall be the duty of the undertaker having charge of such funeral procession to supply each motor vehicle forming a part thereof with a card not less than eight inches square which shall be white in color, and upon which shall be printed, stamped, or stained a purple cross, the extremities of which shall extend to the edge of such card. Each motor vehicle forming such funeral procession shall have displayed on the right hand side of the windshield thereof the card aforesaid in a secure manner. Any person passing through a funeral procession of motor vehicles designated as aforesaid, with a vehicle of any kind, shall be deemed guilty of a misdemeanor and upon conviction thereof shall be fined not to exceed \$25."

FUNERAL REGULATIONS.—Township, city and village health officers empowered to supervise funerals of persons dead from scarlet fever, diphtheria, small-pox or other communicable disease which endangers the public health.

INTEREST—Legal rate, 5%.

TIME LIMITS ON SUITS—Accounts, 6 years; ordinary notes, 6 years.

TRANSPORTATION, HEALTH AND REMOVAL REGULATIONS.—1. It shall be the duty of every funeral director, undertaker or embalmer within this State, who may desire recognition by transportation companies and common carriers, for the transportation of the bodies of human beings dead from infectious, contagious or communicable diseases, to conform to all the rules and regulations made therefore by the Michigan Department of Health, referred to in Sec. 5, Act 233, Laws of 1901, as amended by Act 132, Laws of 1903, in accordance with which act, the Michigan Department of Health undertakes to examine and to grant licenses to such persons as are found on examination to be properly qualified to disinfect and prepare for transportation bodies dead from communicable disease; such licenses to authorize persons holding them to prepare for transportation bodies dead from any dangerous communicable disease, and no other person shall be so authorized.

The bodies of those who have died of diphtheria (or any diphtheric disease, including heart failure, croup, membranous croup, angina maligna, putrid sore throat, malignant sore throat), scarlet fever (sometimes called scarlatina, scarlet rash, scarlatinal nephritis, canker rash, rash), glanders, anthrax, smallpox (variola, variolo vari-

cella, chicken pox, Cuban itch), Asiatic cholera, yellow fever, typhus fever, influenza (influenza-pneumonia), bubonic plague or leprosy,* shall not be transported nor accepted for transportation unless prepared for shipment by being thoroughly disinfected by (a) arterial and cavity injection with a disinfectant fluid approved by this Department (see Rule 10), (b) disinfecting and stopping of all orifices with absorbent cotton, and (c) washing the body with the disinfectant, all of which must be done by an Embalmer, holding a license issued by the Michigan Department of Health. After being disinfected as above, such body shall be enveloped in a layer of cotton not less than one inch thick, completely wrapped in a sheet, bandaged, and encased in an air-tight zinc, tin, copper or lead-lined coffin, all joints and seams hermetically soldered, and all enclosed in a strong tight wooden box. Or, the body being prepared for shipment by disinfecting and wrapping as above may be placed in a strong coffin or casket, and the coffin or casket encased in an air-tight zinc, copper or tin case, all joints and seams hermetically soldered, and all enclosed in a strong wooden box. In all cases where bodies are forwarded under Rule 2, notice must be sent by telegraph by the shipping embalmer to the health officer, or, when there is no health officer, to other competent authority at destination, advising the date and train on which the body may be expected. The coffin or box should not be opened after reaching its destination.

3. Bodies dead of typhoid fever (typho-malarial, enteric, continued, mucous fever, typhoid malaria, typhoid pneumonia, fever unless definitely stated, heart failure), puerperal fever, erysipelas, consumption, (tuberculosis of any organ), measles (morbillirubeola), rotheln (German measles, rubella), whooping-cough (cough, pertussis), pneumonia (lung fever, inflammation of the lungs), meningitis, rabies (hydrophobia), and tetanus (lockjaw), which can reach their destination within forty-eight hours from time of death, may be received for transportation when prepared for shipment by filling the abdominal and thoracic cavities with a disinfectant approved by this Department (see Rule 10), washing the exterior of the body with such an approved disinfectant, stopping all orifices with absorbent cotton and placing the body in a strong coffin or casket, and enclosing it in a strong wooden box. In case such body cannot reach its destination in forty-eight hours it must be prepared for shipment by being thoroughly disinfected by (a) arterial and cavity injection with a disinfectant fluid approved by this Department, (b) disinfecting and stopping of all orifices with absorbent cotton, and (c) washing the body with such an approved disinfectant, and placing the body in a strong coffin or casket, and enclosing it in a strong wooden box. The preparation of all bodies under this rule must be done by an Embalmer holding a license issued by the Michigan Department of Health.

4. Bodies dead from violence or from a disease not communicable or not named in Rule 2 or 3, which shall reach their destination within thirty hours from time of death, or are addressed to the Demonstrator of Anatomy of some medical college, may be received for transportation when encased in a sound coffin or casket and enclosed in a strong wooden box. Heart failure should never be accepted as a cause of death, except under Rule 2 or 3 (as equivalent to diphtheria or typhoid fever).

If the body is not so addressed, or cannot reach its destination in thirty hours from time of death, it must be prepared for shipment by filling cavities with a disinfectant approved by the Michigan Department of Health, washing the exterior of the body with the same, stopping all orifices with absorbent cotton, and enveloping the entire body with a layer of cotton not less than one inch thick, and all wrapped in a sheet and bandaged, and encased in an air-tight coffin or casket, and all enclosed in a strong wooden box. But if the body has been thoroughly disinfected by arterial and cavity injection and surface disinfection, by a licensed Embalmer, the wrapping in cotton, the bandaging and air-tight coffin may be dispensed with.

5. In the case of a contagious, infectious or communicable disease, the body must not be accompanied by a person or article which has been exposed to the infection of the disease, unless certified by the health officer as having been properly disinfected. Before selling a passage ticket, agents shall carefully examine the transit permit, and note the name of the passenger in charge, and of any others proposing to accompany the body, and see that all necessary precautions have been taken to prevent the spread of the disease. The transit permit in such cases shall specifically state who is authorized by the health authorities to accompany the remains.

6. Every dead body, except as provided for in Rule No 7, must be accompanied by a person in charge, who must be provided with a passage ticket and also present a full first-class ticket marked "corpse" for the transportation of the body, and a transit permit including Health Officer's Permit for Removal, Registrar's Removal Permit,

* Bodies dead of some of the diseases named in Rule 2 are forbidden to be shipped into any other state than Michigan. Many of the States forbid the transportation of bodies dead of smallpox, typhus fever, plague, and cholera.

Embalmer's Certificate, name of deceased, date and hour of death, age, place of death, cause of death, whether communicable or non-communicable, the point to which the body is to be shipped, and when death is caused by any of the diseases specified in Rule 2, the health officer's statement of the names of those authorized by the health authorities to accompany the body. The transit permit must be made in duplicate, and the signatures of the Registrar, Health Officer and Embalmer, must be on both the original and duplicate copies. The Registrar's Removal Permit, the Embalmer's Certificate, and Baggage man's instructions, of the *original*, shall be detached from the transit permit and securely fastened on the coffin box. The Health Officer's Removal Permit shall be handed to the passenger in charge of the corpse. The whole duplicate copy shall be sent to the official in charge of the baggage department of the initial line, and by him to the Michigan Department of Health.

7 When dead bodies are shipped by express the whole original transit permit shall be securely fastened upon the outside box and the duplicate forwarded by the express agent to the Michigan Department of Health.

8 Every disinterred body, dead from any disease or cause, shall be treated as dangerous to the public health, and shall not be accepted for transportation unless said removal has been approved by the Michigan Department of Health, and the consent of the health authorities of the locality to which the corpse is consigned has first been obtained, and all such disinterred remains shall be enclosed in a hermetically soldered zinc, tin or copper lined coffin or box. Bodies deposited in receiving vaults, or otherwise kept for thirty days after death, will be treated and considered the same as buried bodies, but if such a body has been thoroughly disinfected by arterial and cavity injection and surface disinfection, by a licensed Embalmer, and the shipment is made within thirty days, the metallic coffin or box may be dispensed with.

9 The license of any Embalmer may be revoked at any time by the Michigan Department of Health, upon sufficient evidence to satisfy the Department that any certificate made by said Embalmer relative to the preparation of a body for transportation was known by him to have been false, or such evidence that a body as Department has been knowingly violated.

10. Disinfection of rooms and contents must be done by or under the direction of the local health officer (Act 137, Laws 1883; Sec 5091, Compiled Laws 1915). Disinfection of the surfaces of the body should be done by the Embalmer by washing with solution of bichloride of mercury, one part of bichloride to one thousand of water, or of carbolic acid one part to twenty of water, or better still, formaldehyde solution not less than eight per cent strength. Embalming should be done by using a solution containing not less than eight per cent formaldehyde. This may be made by using a little more than one part of the commercial "forty per cent" (usually about thirty-five per cent) solution of formaldehyde to four parts of water. No arsenical solution shall be used.

11 After January 1st, 1912, the license of any Embalmer in Michigan will be recalled and cancelled by the Michigan Department of Health, if the said Embalmer shall sign a death certificate to procure a permit for the burial or removal of a dead human body which he did not embalm and prepare for burial, or which was not embalmed and prepared for burial under his immediate personal supervision.

12 Private Funerals. A private funeral is one at which only the presence of the immediate family and those in the house with the deceased prior to death, the necessary representatives of the health department, undertaker and his assistants, is allowed. Private funerals cannot be held from churches, and neither the funeral party nor the body may be taken to the church.

"It shall be unlawful for any railway agent, express agent, baggage master, conductor, or other person acting as such, to receive the dead body of any person for shipment, or transportation by railway or other public conveyance, to or from any point in this state or to a point outside of this state, unless said body be accompanied by a removal or shipping permit signed by the health officer of the local board of health, and a certificate, attached to the outside box containing such body, showing the name and official number of the embalmer by whom it was prepared, and the method of preparation employed. Provided, That nothing in this act shall be so construed as to prevent the shipment of dead bodies intended for use for anatomical purposes within this state when the same are so designated by the shipper."

MINNESOTA

CLAIMS AGAINST ESTATES—Claims for funeral expenses rank next to administration costs in right to priority of payment.

DEATH STATISTICS—State Board of Health supervises. "The undertaker or person acting as such, at the burial, cremation or other disposal of the body of any

person dying in this state shall obtain and file with the local registrar of the district in which the death occurs, a certificate of death," etc. The form used conforms to the standard form of death certificate set forth in the chapter on Death Statistics in Part I of this book.

"Upon the filing of a proper certificate of death, completely filled out, with the local registrar, or sub-registrar, but not otherwise, he shall issue a burial permit reciting the place and time of death, the full name, age, sex and nativity of the deceased, the cause of death; the name of the medical attendant; the time and place of interment; the name and address of the undertaker, that a certificate of death complying with the law has been filed in his office; and authorizing the burial or other disposition of the body. He shall sign the permit officially, date it the day of issue, and deliver it to the undertaker, or person applying therefor, who shall deliver it to the person in charge of the place of burial, or when the body is transported by common carrier, to the person accompanying it, before interment or other disposition of the body is made. Provided, that when the body is transported from without for burial within the state, the transit permit issued in accordance with the law of the state where the death occurred, shall be accepted by the local registrar of the district in which the interment is made in place of a certificate of death and a burial permit issued accordingly, with the fact that the body is brought in for interment endorsed thereon."

Sellers of caskets at retail are required to keep record of and report sales, and enclose in caskets sold notice calling attention to Vital Statistics Law, under provisions same as set forth in Paragraph 6 of the form of Vital Statistics Law appearing in the chapter on Death Statistics in Part I of this book.

"The body of any person dying, or found dead, in this state, or the body of a still-born infant, shall not be interred or otherwise disposed of, or removed from one registration district to another, or held for more than seventy-two hours after death, unless and until a proper certificate of death has been filed and a permit issued as provided for by this act. When there is a person charged with the care or supervision of a cemetery, burial place or other premises where human bodies are interred, or otherwise disposed of, the name of such person and his address shall be posted in a conspicuous place at the entrance of such premises. He shall not inter, nor permit the interment or other disposition of the body of a deceased person until he receives a burial permit as herein provided. He shall keep a record of all interments, or other disposition of the body, made on the premises under his charge, stating the name of the deceased person, place of death, date of burial and the name and address of the undertaker. Such record shall be open to public inspection at all times."

A bulletin obtainable from the State Board of Health explains the duties and privileges of embalmers willing to act as subregistrars.

EMBALMERS' LICENSES—No person shall embalm any dead human body without being licensed by the State Board of Health. The Board is empowered to examine all applicants, and to determine whether such applicants possess the necessary qualifications to properly embalm dead human bodies, and, if upon such examination, the board shall determine that such applicant is properly qualified to embalm, it shall grant a license for a period ending the 31st day of July following.

Applicant shall pay a fee of \$5.00. No person shall be granted license unless at least 21 years of age, of good moral character, and shall have for at least one year had practical experience in embalming. Any license may be renewed for a period of two years from the 31st day of the preceding July upon the payment of a renewal fee of \$1.00.

The Board may revoke, or may refuse to grant or renew, a license upon proof of the violation by the holder of such license or the applicant for such license or renewal of the rules of the State Board of Health concerning the care, custody or disposition of dead human bodies, or the disinfecting of premises where contagion exists, or for want of moral character or of capacity.

Any person who shall embalm a dead human body, or who shall hold himself out as an embalmer thereof without being licensed as herein provided shall be liable to a fine of not less than \$25.00 or more than \$100.00 or imprisonment for a period of not to exceed three months.

BOARD RULES—Applicant must pass examination on: Anatomy, 10 questions; bacteriology, 10 questions; elementary chemistry, 10 questions; public health, sanitation and laws and regulations, 10 questions; the practice of embalming, 20 questions; business methods, 5 questions. Must attain a mark of 75 per cent or more in each and every subject.

Examination is held by officers of the State Board of Health assisted by an Examining Committee of practical embalmers appointed by Board and by professors and instructors of the University of Minnesota School of Embalming. No common school

restrictions for Board's examination. No Embalming School restrictions for Board's examination. No credit given at Board's examination for attendance at any common, high or embalming school. No Embalming School examinations accepted in lieu of examination by Board except those of the School of Embalming of the University of Minnesota.

The University of Minnesota School of Embalming is conducted by the University authorities at the State University. Before admission students must have had at least one year in high school or its equivalent. Course covers 3 months full time. The State Board of Health assists by giving instruction in public health, sanitation, laws and regulations. The University School instructors assist the Board in annual examination. The University School instructs on all subjects which the Board requires examination in and its examinations are similar to and on a par with the examinations of the Board. Examinations of the Board are similar to examinations of University School. Board accepts the examinations of the School as the examinations of the Board and in lieu thereof.

Licenses issued without examination to holders of licenses in reciprocating states.

Fee, \$5

EMBALMING FLUID REGULATION—Embalming fluid sold or used in state must contain formaldehyde gas in proportion of 5% by weight in every 100 parts by volume of fluid, and must not contain any ingredient interfering with germicidal action. Such fluids must contain no chloral, arsenic, mercury, zinc or other mineral poison. List of ingredients must be filed with State Board of Health.

HEALTH AND DISINTERMENT REGULATIONS.—A body must not remain unburied longer than four days without permission from the local health officer unless it is to be shipped, in which event shipment must begin within this time. When death is due to any communicable disease the body must not remain unburied more than 24 hours unless prepared for shipment as provided for under the regulations governing the transportation of the dead.

No person, except a licensed embalmer, and then only after first having obtained a permit therefor from the local health officer and the local registrar of vital statistics, shall disinter a body, provided, the authorities in charge of a cemetery may transfer bodies buried therein from one part of such cemetery to another part thereof with the approval and under the supervision of the local health officer. Any person desiring such permit shall first secure from the actuary or secretary or other person in charge of the cemetery records a written statement showing that such body is buried in that cemetery and giving thereon the name of deceased, age at time of death, date of death, cause of death, and date of burial. He shall present this statement to the proper local health officer. If there is no such cemetery record then such statement by relatives of the deceased or other competent person or persons who are empowered to cause such disinterment and removal, shall be presented. If the health officer has cemetery records of the cemeteries in his municipality and a record of such interment, no such written statement need be secured or filed with him. The local health officer shall question the applicant as to the manner in which it is proposed to disinter, handle and dispose of the remains, and shall give and enforce such directions for disinterment, removal and reinterment as he deems necessary for the protection of the public health. Such local health officer shall thereafter notify the local registrar of vital statistics orally or in writing if he has approved such application. The applicant shall thereupon apply to the registrar of vital statistics having jurisdiction over the district in which the body proposed to be disinterred is buried, who shall issue a written "disinterment-reinterment" permit, using for such purpose the form now provided by the State Board of Health for original interments and noting thereon the words "disinterment-reinterment permit." Such permit shall not be issued by sub-registrars.

Only licensed embalmers shall be permitted to take charge of remains of those who have died of any communicable disease. Such remains shall be properly disinfected and enclosed in a tightly sealed coffin which shall not thereafter be opened.

The funeral shall be strictly private when the death has been due to smallpox, scarlet fever, diphtheria, epidemic cerebrospinal meningitis, epidemic anterior poliomyelitis, epidemic influenza, or other dangerous communicable disease. Private funeral is not required when services are held over a body exhumed for removal or shipment six months or more after death from a communicable disease. A private funeral allows the presence of the immediate family and requires the exclusion from the house or premises where such death occurred of all other persons not resident in the tenement with the deceased, and already exposed to the disease, except the embalmer and his necessary assistants and a minister of religion who shall be present only when the embalmer in charge of the case is also present and who shall be directed by said embalmer as to the precautions to be taken. Provided that the total number of persons

present at any such funeral shall not exceed fifteen, exclusive of the minister, the embalmer and the embalmer's necessary assistants. Private funerals cannot be held from churches. Neither the funeral party nor the body may be taken to the church. Attendance at interment is limited to those enumerated above. The opening of hermetically sealed caskets containing disinterred remains of persons dead from any cause and shipped for burial in Minnesota is hereby forbidden except when so ordered by a court of competent jurisdiction.

INTEREST.—Legal rate, 6%

JURY SERVICE.—Licensed embalmers exempted from jury service.

MORGUES.—In counties of a population of 100,000 or more public morgue must not be connected with an undertaking establishment, and no one employed in the morgue shall be connected with any such undertaking establishment. Coroners forbidden to interfere in the selection of a funeral director to take charge of any body for burial from the morgue.

OFFENSES AGAINST BODIES.—Bodies required to be buried or cremated within reasonable time. Opening of graves without authority unlawful. Attachment or detention of body for debt or on claimed lien, or interference with the carrying or accompanying of a body to a place of burial or cremation a misdemeanor.

TIME LIMIT ON SUITS.—Accounts, 6 years; notes, 6 years

TRANSPORTATION REGULATIONS.—*Board of Health Rulings.*—When a body is carried to a point a short distance across country, even if through more than one township, and when there is no direct or fairly adequate train service between the two points, then the regulations relative to the transportation of the dead need not be applied.

"When bodies are carried by wagon, automobile or automobile hearse, through intervening townships, villages or cities and in which cases these regulations originally contemplated that train service would be used, all provisions of the regulations must be complied with. The shipping embalmer should in such cases send the duplicate copy of the Transit Permit to the State Board of Health."

For reference to additional local regulations, see Section 11 in Part I of this book.

MISSISSIPPI

CLAIMS AGAINST ESTATES.—Funeral bills, expense of last illness and administration costs have priority over other claims.

Concerning the payment of funeral bills by administrators and executors in Mississippi, the Supreme Court of that state said in the case of *Gaulden v. Ramsey*, 85 South-east Reporter, 109:

"It is unnecessary for us to determine whether the appellee's claim for the funeral expenses of the deceased is set forth in the manner required by section 2106, Code of 1906 (section 1774, Hemingway's Code), for the reason that it need not have been probated at all. It is not a claim against the deceased, and it is only claims against the deceased which the administrator is forbidden to pay unless it has been probated.

"It is the duty of an administrator to bury the deceased and to pay the expenses incident thereto out of the property of the deceased. And, if this expense has been incurred prior to the appointment of the administrator, it becomes a charge against him after his appointment payable out of the property of the deceased."

INTEREST.—Legal rate, 6 per cent.

payment of \$2 fee within 30 days preceding such expiration. Licenses revocable for the collection and preservation of vital statistics on forms prescribed by such Board.

EMBALMERS' LICENSES.—State Board of Embalming consists of the Executive Officer of the State Board of Health, the Director of the Bureau of Vital statistics, and five appointees of the Governor, who shall have had at least five years' experience in embalming, etc. Four-year rotating terms.

Unlicensed persons applying for licenses must be at least 18 years old and have practiced at least two years or have had at least two years' practical instruction in embalming and disinfecting under a licensed embalmer, or hold a certificate from a reputable school of embalming. If it is found upon examination that the applicant is of good moral character, possessed of knowledge of said science of the embalming and care and the disposition of the dead and has a reasonable knowledge of sanitation and the disinfection of diseased persons, and the apartment, clothing and bedding in case of death from infectious or contagious diseases, the board shall issue a license. Application to be accompanied by \$5 fee.

Licenses to be registered in the office of the Circuit Court and conspicuously displayed in place of business. They terminate June 30 each year and are renewable on

payment of \$2 fee within 30 days preceding such expiration. Licenses revocable for violation of law or rules.

Violation of law punishable by \$50-\$100 fine.

BOARD RULES—Application to be made on form provided by Board. Moral character must be vouched for by licensed embalmer or a registered physician and a funeral director who is a member of the state association. Application to be filed at least 30 days before examination. At least one examination held every year. Special examinations may be held at expense of applicants.

Applicant must have assisted in embalming at least 25 bodies. He must have had two years of practical experience in embalming under the direction of a licensed embalmer, or a six weeks' course in a recognized school of embalming and one year's practical experience, or a course of twelve weeks and six months' practical experience, or a 26-weeks' course. Correspondence courses not accepted. He must pass a practical examination on a cadaver, if one can be secured, or an examination on a chart. He shall pass a written examination of not less than sixty questions upon the following subjects: Anatomy of the principal organs of the body, fifteen questions. The cavities of the human body, five questions. Arterial and venous system, ten questions. The blood and discolorations, five questions. Arterial and cavity embalming, fifteen questions. Bacterial and disinfection, six questions. Transportation rules, four questions. He shall pass an oral examination of not less than twenty-five questions upon the following subjects: Embalming, fifteen questions. Communicable diseases, four questions. Disinfection, six questions. He must attain a proficiency of 75 per cent on the entire examination.

Holder of license in another state must pay \$10 in applying for license and furnish certificate or license showing licensing in other state. Examination not required if other state reciprocates with Mississippi in recognizing licenses.

An employee, student, apprentice, helper, assistant, undertaker or any other person who is not a duly licensed embalmer shall not attempt to practice the science of embalming in any of its branches unless a duly licensed embalmer is actually present during the entire operation and the embalming is done under such licensed embalmer's personal direction and supervision.

Embalming is defined in accordance with the definition set forth in the chapter on Licensing of Embalmers and Funeral Directors in Part I of this book.

EMBALMING FLUIDS, ETC—Sale or other disposal or use of embalming fluids containing arsenic or other deadly poison forbidden under penalty of thirty days' imprisonment and/or fine not exceeding \$500.

TIME LIMIT ON SUITS—Accounts, three years; notes, six years.

TRANSPORTATION RULES—See Section 11 in Part I of this book.

MISSOURI

CLAIMS AGAINST ESTATES—On timely presentation claim for funeral expenses is entitled to priority over other demands against estate.

DEATH STATISTICS—State Board of Health supervises. Law substantially same as set forth in paragraphs 1-5, 7, 8 of the form presented in the chapter on Death Statistics in Part I of this book as a standard for comparison. Violations of act punishable by \$20-\$100 fine.

EMBALMERS' LICENSES—State Board of Embalming consists of five members appointed by Governor. They must be practical and experienced embalmers. Not more than three members shall be of the same political party. Rotating terms of five years each. Removable for neglect of duty, incompetency, or improper conduct. Board required to prescribe a standard of proficiency and fitness of those engaged in embalming and the care and disposal of bodies. Must meet at least once a year and oftener as proper discharge of duties may require.

One desiring a license must make written application to the Board with a license fee of \$10, and show upon examination that he is of good moral character, possessed of a knowledge of the venous and arterial systems, the location of heart, lungs, stomach, bladder, womb, and other organs in the human body, the location of abdominal, pleural, and thoracic cavities, the location of carotid, brachial, radial, ulnar, femoral, and tibial arteries; a knowledge of the science of embalming and the care and disposal of the dead, and a reasonable knowledge of sanitation and the disinfection of bodies and the apartment, clothing and bedding in case of a death of infectious or contagious disease. Applicant must show that he has personally embalmed at least ten bodies under the direction of a licensed embalmer. Licenses must be registered in the Probate Judge's office and be conspicuously displayed in the holder's office. Licenses are renewable annually on payment of \$3 fee.

Unlawful for unregistered embalmer to practice or pretend to practice embalming.

But the act does not apply to persons engaged merely in furnishing burial receptacles for the dead. Violation of the law is punishable by a \$50-\$100 fine. See also chapter in Part I of this book on Licensing of Embalmers and Funeral Directors.

BOARD RULES.—Board meets annually immediately following adjournment of the annual convention of the Funeral Directors' Association of Missouri and at same place; also each year in November at place and date designated by Board. Application for examination shall be made on blanks furnished by Board and must be filed with Secretary at least ten days before the date of Board meeting. An applicant for examination shall be endorsed by two licensed embalmers and by one registered physician. All examinations shall be in the presence of Board when legally assembled; not less than three members being present, and may be either written, printed or oral. No license shall be granted unless the grade shall reach seventy-five per cent. No permission granted to practice without license. No fee shall be returned when the applicant fails to pass; but he or she may appear before the Board at any of its meetings for re-examination without additional charge.

FUNERAL BENEFIT ASSOCIATIONS.—Unless member has contracted in writing, his legal representative cannot be deprived of right to purchase funeral supplies and purchases wherever he pleases.

INTEREST.—Legal rate, 6 per cent.

JURY SERVICE.—Licensed embalmers exempted.

TIME LIMITS ON SUITS.—Accounts, five years; notes ten years.

TRANSPORTATION LAW.—(References to section of statutes.)

6687 The body of any person having died of Asiatic cholera (cholera), typhus or ship fever, yellow fever, or bubonic plague, shall not be offered to or accepted by any common carrier for transportation unless it shall have been prepared for shipment in accordance with section 6688, and under the supervision of an officer of the State Board of Health, or supervision of a member of the State Board of Embalming.

6688. The body of any person having died of diphtheria (membranous croup), scarlet fever (scarlatina or scarlet rash), glanders, anthrax, leprosy or smallpox, shall not be offered to or accepted by any common carrier for transportation unless, first, it shall have been thoroughly embalmed by arterial and cavity injection with a disinfecting fluid, the orifices disinfected and packed with cotton, and the whole exterior of the body washed with a disinfecting fluid; or, second, unless it shall have been completely wrapped in a sheet that is saturated with a solution of bichloride of mercury, in the proportion of one ounce of bichloride of mercury to one gallon of water, and encased in an air-tight metal or metal-lined burial case, coffin, casket or box that is closed and hermetically sealed.

6689. The body of any person having died of tuberculosis, puerperal fever, typhoid fever, erysipelas, measles, or other dangerous or communicable diseases other than those specified in sections 6687 and 6688, shall not be offered to or accepted by any common carrier for transportation, unless such body shall have been thoroughly embalmed by arterial and cavity injection with a disinfecting fluid, as specified in section 6688, or, if such body is not so embalmed, it must be encased in an air-tight metal or metal-lined burial case, coffin, casket or box that is closed and hermetically sealed. The body of any person having died of a disease that is contagious, infectious or communicable must not be accompanied by clothing or articles that have been exposed to the infection of such disease.

6690. The body of any person having died of a cause or disease that is not contagious, infectious or communicable, and from which no offensive odor emits, may be offered to and accepted by any common carrier for transportation, provided the destination can be reached within twenty-four hours from the time of death of such person, but if the destination cannot be reached within twenty-four hours from the time of such death, then the body must be thoroughly embalmed by arterial and cavity injection with a disinfection fluid, or encased in an air-tight metal or metal-lined burial case, coffin, casket or box that is closed and hermetically sealed.

6691. A disinterred human body, dead of a disease or any cause, will be treated as infectious and dangerous to the public health, and shall not be offered to or accepted by any common carrier for transportation unless it is encased in an air-tight metal or metal-lined burial case, coffin, casket or box that is closed and hermetically sealed.

6692. No disinterred human body shall be removed from one cemetery to another without a permit first having been obtained from the local board of health or health department of the district wherein said body shall have been interred.

6693. When hermetic sealing is required herein, the burial case, coffin, casket or box used must be of metal, or of other material with metal lining, and must be so constructed that when closed and fastened the same shall be air-tight.

6694. When a transit permit is desired for the shipment of a dead human body, the

physician attending the deceased in the last illness shall furnish a certificate showing the name of the deceased, the age, the time and place of death, the cause of death, and whether of a contagious or infectious disease. If there was no attending physician, the coroner of the county in which the death occurred shall make the certificate.

6695 It shall be the duty of the Board of Health or Health Department, or (if no such board . . . or department . . . exist) the town clerk of any city, town or village . . . , or in the event there be no such existing officer, then any registered physician), to issue transit permit for each dead human body to be shipped from that city, town or village. Provided, it must appear that the body to be shipped has been prepared for shipment in accordance with the provisions of this article. The transit permit must show where and by whom issued, the name of the deceased, the age, the time and place of death, the cause of death (and whether contagious or infectious disease), the name of the physician or coroner making certificate, the name of the person preparing the body for shipment, and the destination thereof.

6696. No dead human body shall be offered to or accepted by any common carrier for transportation unless it is in a burial case, coffin or casket securely closed, and the burial case, coffin or casket containing the body is in a wooden, metal or metal-lined box that is securely closed, and on the top of the box must appear the name of the deceased, the destination, the time and place of death, the cause of death, the name of the attending physician or coroner, the name of the person who prepared the body for shipment, and the body is accompanied by a transit permit as herein provided for.

6697 Makes violations of the law punishable by \$25-\$500 fine and/or 30-60 days' imprisonment.

MONTANA

CLAIMS AGAINST ESTATES—Funeral bills rank first.

DEATH STATISTICS.—Secretary of State Board of Health is State Registrar, and charged with enforcement of law.

The body of any person whose death occurs in the state shall not be interred, or otherwise disposed of, or removed from or into any registration district, until a permit for burial or a removal shall have been properly issued by the registrar of the district in which the death occurs. And no such burial or removal permit shall be issued by any registrar until a complete and satisfactory certificate of death has been filed with him, as hereinafter provided. Stillborn children, or those dead at birth, shall be registered as births and also as deaths, and a certificate of both the birth and death shall be filed in the usual manner.

Law contains provisions substantially the same as those in paragraphs 4, 5, 8, 9 of the standard form of Vital Statistics Law set forth in the chapter on Death Statistics in Part I of this book, which see.

A regulation of the State Registrar provides: "Any person who shall furnish a casket, coffin or box in which to bury the dead shall be deemed as acting as an undertaker, and shall be held responsible for proper filing of a certificate of return of death and for the securing of a burial or removal permit"

Another regulation reads. "Every person, firm or corporation selling a casket, coffin or box for the burial, removal or other disposal of the dead shall keep a record showing the name of the purchaser, purchaser's postoffice address, name of deceased, date of death, and place of death . . . , and name of attending physician or coroner, if any, which record shall be open to inspection of the State Registrar at all times. On or before the fifth day of each month the person, firm or corporation selling such casket shall report to the State Registrar each sale for the preceding month on a blank provided for that purpose; provided, however, that no person, firm or corporation selling caskets to dealers or undertakers only shall be required to keep such records."

Death certificate form to be in United States Census Bureau form, which see in the chapter on Death Statistics in Part I of this book.

Any registrar authorized to issue burial permit when death occurred in an adjoining registration district when presented with proper death certificate

Where it is necessary to obtain a burial or removal permit before completion of an inquest, the coroner may make out a temporary certificate pending inquest, which certificate shall, whenever practicable, give all the personal and statistical particulars required by law and the regulations of the State Board of Health. Such certificates shall be marked at the top: "For temporary use only," and shall state under the item *cause of death*, "Inquest pending." Such temporary certificate shall not be considered a substitute for the permanent certificate.

When bodies are brought into any registration district by a common carrier, if from points without the State of Montana, they must be accompanied by a transit and removal permit, issued in conformity with the laws and health regulations of the state in which

death occurred. This permit must be delivered to the local registrar of the district in which the body is to be interred, who will issue a burial permit in the same way as if death had occurred in his district and make out a death certificate from the transit permit, writing across the face of such certificate the words "Imported Case." If the body is received from a point in the State of Montana, the removal permit issued at the place of death shall be sufficient permit for burial in any district in Montana, and such removal permit must be returned to the registrar of the district in which the body is buried.

No dead body after burial shall be disinterred for removal or transport unless a permit has been obtained therefor from the state registrar. Written applications for such permits shall be made on blanks supplied by the State Registrar and applications by telegraph or telephone shall not be accepted. Unless certificate of death for the body to be disinterred is on file with the State Registrar he shall require that one shall be presented, made out in the same manner as for a body that had not been interred. Disinterment permits or transit permits for disinterred bodies will be issued only to embalmers duly licensed under the regulations of the State Board of Health. This paragraph shall not apply to the disinterment of bodies for purposes of establishing identity, for inquest, or for removal from one lot to another within the same cemetery.

DISPOSAL OF BODIES, ETC., OFFENSES.—The statute enables one to direct the manner in which his body shall be disposed of after death. Subject to authorized dissection or preparation for transportation, every body must be decently buried within a reasonable time. Unauthorized dissection is a misdemeanor. Duty to bury devolves in the following order: (1) Husband or wife; (2) if decedent was unmarried, duty rests on adult next of kin if able to defray expenses; (3) if decedent left no husband, wife or kin, duty rests upon coroner or poor authorities. If person primarily bound neglects duty for more than reasonable time, it devolves upon next person specified. If all neglect, it devolves upon the tenant or owner of premises where death occurred. Neglect of this duty is a misdemeanor and one performing the duty in the neglectful person's stead may recover treble the expenses incurred in making burial. The person bound to bury is entitled to custody of the body for that purpose except as against a coroner holding inquest. Misdemeanor to detain body for debt.

EMBALMERS' LICENSES.—Law empowers State Board of Health to "establish a system of licensing embalmers and undertakers." Regulations of that Board provide for a State Board of Embalmers, consisting of three appointees of the State Board of Health. Secretary of both boards common. Other two members to be licensed embalmers and hold office for two years, subject to removal for incompetency or improper conduct. Members entitled to \$5 a day and actual expenses while attending meetings. Examination meetings at least twice a year. Licenses granted by State Board of Health on recommendation by Board of Embalmers. Licenses revocable for lack of good moral character, gross or wilful malpractice, violation of law or rule, false statements, etc.

Applications for licenses to be made to State Board of Health. Applicant must be at least 21 years old, able to read and write correctly, of good moral character, must have a knowledge of hygiene and sanitation, as far as relates to the burial of the dead; must have a thorough knowledge of the care and disposition of dead bodies, particularly in contagious diseases, and disinfecting rooms, clothing and bed clothing; must have a thorough knowledge of embalming, and a practical knowledge of the state, county and city laws governing coroner's cases; also rules of the State, County and City Boards of Health; must have been steadily engaged with an "undertaker or undertakers" for two years (having been called in as an extra hand or employee will not be considered as serving a practical experience for two years continuously), or must have a diploma from an embalming school giving a six months' course; must be vouched for by two undertakers. A fee of \$25 must be paid prior to examination. Should the applicant fail to make the required average, \$10 will be retained. "Affidavit must be made by undertakers who have been licensed at least two years, and those vouching for applicant must know that he has a knowledge of sanitation and disinfection, such as pertains and refers to the preparation and burial of persons dead of contagious and infectious diseases." Application must be filed at least 20 days before examination date.

Licenses expire December 31 and are renewable on payment of \$2 fee. Licenses issued to holders of licenses in reciprocating states, if requirements at least equal. Licenses to be posted in place of business.

INTEREST—Legal rate, 8 per cent.

TIME LIMIT ON SUITS.—Accounts, 5 years; notes, 6 years.

TRANSPORTATION RULES.—See Section 11 in Part I of this book.

NEBRASKA

ADMITTANCE TO EMBALMING ROOMS—There must be posted on the entrance to all embalming rooms the following notice:

NO ADMITTANCE

Admit licensed embalmers and their assistants only to any room while a body is being prepared and embalmed. All others must have the direct permission of the immediate family

CLAIMS AGAINST ESTATES.—A claim for necessary funeral expenses is preferred to an amount not exceeding \$100.

DEATH STATISTICS—Under control of State Department of Public Welfare. "A death certificate in the form prescribed by the United States Census Bureau shall be filled out by the physician last in attendance, if one was in attendance, or if not, by the coroner or local health officer, of every person dying or found dead in this state. Such certificate shall be filed with the local registrar before the body is interred or otherwise disposed of, or removed from the locality where the death occurred. Upon receipt thereof, the local registrar shall issue a burial or removal permit. No body shall be interred or accepted by a railroad company for transportation without the registrar's permit and a copy of the death certificate. All burial or removal permits when received shall be dated and countersigned by the sexton of the cemetery or the agent of the transportation company as the case may be, and returned within ten days to the local registrar by whom issued with a report as to the disposition made of the body.

"A removal permit issued in accordance with the law of the place when the death occurred, may be accepted by the local registrar of the place where the body is to be interred or otherwise disposed of, as a basis for the issuance of a burial permit, and in his return to the state registrar, the place of death shall be stated. When no physician was in attendance, the undertaker or local registrar shall refer the case to the health officer for the death certificate. If the circumstances indicate that death was caused by neglect, violence, or any unlawful means, the case shall be referred to the county attorney for investigation and certification, and he shall state the cause of death and the means or instrument by which it was produced.

"Every retail dealer in caskets shall keep a record of sales which shall include the name and postoffice address of the purchaser, and the name, and the date and place of death of the deceased. A report thereof shall be forwarded to the department on the first day of each month. This requirement shall not, however, apply to sellers of caskets to dealers or undertakers only. Every seller of a casket at retail who does not have charge of the disposition of the body, shall enclose within the casket a notice calling attention to the requirements of the law, and a blank certificate of death."

REGULATION OF STATE DEPARTMENT OF PUBLIC WELFARE—"It shall be the duty of the undertaker, where there is no local registrar, or where it is impossible to send to the nearest local registrar, to report deaths promptly to the State Department of Health. Where the above condition exists, this can be done by either the undertaker or the physician or the coroner, but all are held jointly responsible."

DISINTERMENT REGULATIONS—No body shall be disinterred until disinterment permit has been issued by the State Department of Health, and permit will be issued only upon application of licensed embalmers. All blanks used in this connection can be obtained from the State Department of Health. For any death occurring since and including 1905 (at which year the Vital Statistics Law went into effect) the disinterment permit will not be issued unless the death certificate is on file.

EMBALMERS' LICENSES—Practicing embalming forbidden unless license first obtained from State Department of Public Welfare. Application must be in writing and accompanied by \$10 fee. Examination must be "sufficiently strict to test the qualifications of the candidate, conducted under rules and regulations prescribed by the Department, and which rules shall provide for a fair and wholly impartial method of examination by a board of three examiners to be chosen by the Department, who shall be persons engaged in the practice and business of embalming in this state for a period of at least five years." License must be registered in the office of the county clerk of the county where the licensee resides or intends to practice.

Licenses renewable annually on or before January 1, on payment of \$2 fee. "If any embalmer shall fail or neglect to procure his or her annual renewal as above provided, his right to act as an embalmer shall cease thirty days after the expiration of his certificate or renewal thereof, and such certificate shall not be renewed except upon the payment of the same fee and upon the same terms as an original application for a certificate."

EMBALMING FLUID REGULATIONS—No embalming fluid containing arsenic, mercury or chloral shall be used in Nebraska in the embalming of dead human bodies for burial. In the embalming of dead human bodies for shipment in Nebraska not less than eight parts by weight of embalming fluid to one hundred and fifty parts of body weight shall be used for arterial embalming.

On and after January 1, 1922, every embalming fluid sold or used in Nebraska must contain formaldehyde gas in the minimum proportion of five per cent by weight of gas in every one hundred parts by volume of the fluid and must not contain any ingredient that interferes with the germicidal action of formaldehyde.

HEALTH REGULATIONS.—Only licensed embalmers shall be permitted to take charge of the remains of those who have died of any communicable, contagious or infectious disease. Such remains shall be properly disinfected and enclosed in a tightly sealed coffin which shall not thereafter be opened.

PUBLIC FUNERALS.—Extract from Regulations of Department of Public Welfare: Why prohibited: To prevent spread of communicable disease, owing to the family having been in contact with the disease and then associating with the community at large.

When prohibited: When the deceased has died with smallpox, diphtheria, cerebrospinal meningitis, poliomyelitis, or scarlet fever.

When may public funerals be held for any one dying with above named diseases: When those who have been in contact show no symptoms of the disease after the incubation period, and have been disinfected according to manner prescribed under the specific disease in these rules and regulations.

If the patient died of diphtheria, public funeral may be held after two cultures taken from the nose and two cultures from the throat of the contacts at least twenty-four hours apart and at least eight hours after an antiseptic has been applied to the part, prove negative.

If the patient died of cerebrospinal meningitis, public funeral may be held after two cultures taken from the naso-pharynx of contacts five days apart and at least eight hours after an antiseptic has been applied to the naso-pharynx, prove negative.

The body shall be placed in either a hermetically sealed coffin or a coffin with the cover screwed down and cover glued to the body of the coffin. There is no objection to having a glass window in the cover to view the remains. Under no condition or circumstances is the cover to be removed.

"Precautions to be taken by undertaker or embalmer: It shall be the duty of undertaker or embalmer to wear a gown from the neck to the ankles, to wear rubber gloves, to have the head covered during the embalming and preparing the body for burial, and after completing, to wash the hands, and if possible, the nose and throat with a mild antiseptic solution."

Disinfecting places other than house in which the body has been taken: When the body is in a coffin as prescribed above, and taken to church before burial, it will not be necessary to disinfect the church.

INTEREST.—Legal rate, 7%.

TIME LIMIT ON SUITS.—Accounts, 4 years, notes, 5 years.

TRANSPORTATION RULES.—Body must be accompanied by transportation of corpse blank issued by the Department of Public Welfare, properly executed by the shipping undertaker and local health authorities.

The "undertaker" shall cause a death certificate to be filed with the Local Registrar of Vital Statistics in and for the locality where the death occurred and receive from him a removal permit before removal or transporting by auto hearse or other conveyance of any dead human body from one locality to another.

For reference to additional local regulations, see Section 11 in Part I of this book.

NEVADA

CLAIMS AGAINST ESTATES.—Funeral bills have priority over other claims.

DEATH STATISTICS.—Law conforms substantially to the provisions appearing in the standard form set forth as a basis for comparison in the chapter on Death Statistics in Part I of this book, excepting Paragraph 6.

EMBALMERS' LICENSES.—State Board of Embalmers consists of three members appointed by Governor and holding rotating three-year terms. Receive traveling expenses but no salary.

Unlicensed person desiring to practice embalming must apply to Board in writing, pay \$10 fee and be examined as to his knowledge of embalming, sanitation, disinfecting bodies, clothing, excreta, etc. Examination in writing and actual demonstration on cadaver. Applicant must be of good moral character and have had one year of actual training in practical embalming, either in a college course in embalming or as assistant to a practicing embalmer.

Licenses revocable by unanimous vote of Board for gross incompetency, dishonesty, habitual intemperance, or any act derogatory to the morals or standing of the profession. Notice and hearing of charges to be given. Licenses to be conspicuously

posted in place of business Renewable annually on payment of \$2 fee Practicing, or holding oneself out as practicing, without a license is punishable by \$25-\$500 fine. Act not to be "construed to apply to persons engaged as layersout, or shrouders of the dead, or to the employees of any cemetery whose duty or business extends no further, nor to officials or employees of any state institution."

Licenses of other jurisdictions recognized on a showing of equal requirements in such jurisdictions, and on payment of \$10 fee.

Any railroad, transportation or express company which shall receive for transportation and shipment any dead human body, unless said body has been prepared by a regularly licensed embalmer of the state of Nevada, with the removal permit, his or her name and the number of his or her embalmer's license attached thereon, unless said body shall reach its destination within the boundaries of this state and within thirty hours from the time of death, shall be guilty of a misdemeanor and, upon conviction thereof, shall be fined not less than \$25 nor more than \$500

INTEREST.—Legal rate, 7%.

TIME LIMITS ON SUITS.—Accounts, 4 years, notes, 6 years

TRANSPORTATION RULES.—See Section 11 in Part I of this book

NEW HAMPSHIRE

CLAIMS AGAINST ESTATES.—Funeral bills rank second to administration expense in right to priority of payment.

CORONER LAW.—No person shall inject into any cavity or artery of the body of any person who has died from an accidental or sudden death or under suspicious circumstances, any fluid or substance until a legal certificate of the cause of death from the attending physician or coroner has been obtained, nor until a legal investigation has determined the cause of death. If a criminal cause of death is alleged or suspected, no fluid or other substance shall be injected into a body until the cause of death is legally established.

DEATH STATISTICS—State Board of Health supervises The law provides: "The record of a death shall state its date, the full Christian and surname of the deceased, the sex, color, condition (whether single or married), age, occupation, place of birth, place of death, the full Christian and surnames and birthplaces of parents and the disease or cause of death." The form of death certificate used calls for following facts Name of deceased, place of death, address, length of residence, previous residence, name of institution, if any, in which death occurred, how long inmate, where from, date of death, age in years, months and days, place of birth, date of birth, sex, color, married, single, widowed or divorced, occupation, cause of death, duration, contributing cause, duration, name of father, maiden name of mother, birthplaces of parents, occupation of father, name of surviving or deceased husband, name and address of physician, date and place of interment, name of cemetery, signature and address of "undertaker"

On death or stillbirth, the attending physician must fill out and deliver death certificate to the "undertaker," or other person superintending the burial, or to the town clerk. Duty of "undertaker," or other person having charge of burial, to add to the certificate date and place of burial, and having signed same to forward to the clerk and obtain burial permit. In case of contagious or infectious disease, certificate to be made and forwarded immediately. If burial to occur in town other than where death occurred, the town clerk issuing the burial permit shall, within six days, forward a duplicate copy of the record of death to the clerk of the town where interment is made, but no return to state registrar unless called for. If deceased resident of state and dies in another state, but is buried in state, clerk of town where interment is to be made shall make record of death, etc If a person is buried in a town other than the one where the death occurred the clerk of the town where the interment is made shall make a like record of the death, but shall not transmit a copy of said record to the state registrar unless called for.

"If deceased did not have the attendance of a physician in his or her last sickness, the town clerk may issue and sign the certificate of death upon the presentation of such facts as may be obtained of relatives, or persons in attendance upon the deceased person during the last sickness or present at the time of death, and the permit for burial shall be issued upon such information.

"No interment or disinterment of the dead body of a human being, nor disposition thereof in a tomb or vault, shall be made without a permit, nor otherwise than in accordance with it. No undertaker or other person shall assist in, assent to, or allow an interment or disinterment to be made until a permit has been obtained It shall be the duty of every undertaker or other person having charge of a burial place, who

shall receive the permit, to preserve and return it to the clerk of the town within six days after the day of the burial."

Violation of act punishable by a fine of not more than \$50.

One making return of death entitled to 25-cent fee.

EMBALMERS' LICENSES.—One engaging in embalming or preparing bodies for burial or transportation must be at least 21 years old with not less than a grammar school education, and shall have practiced embalming at least twelve months, and shall have had at least one term of practical instruction in embalming and disinfecting in an approved embalming school, and shall have intelligent comprehension of anatomy, characteristics and dangers of contagious and infectious diseases, action of disinfectants, and must pass examination

Licenses expire annually and are revocable for cause, including violation of law or rules.

Examinations held at least twice annually. The examination papers shall contain such questions relating to the subject of embalming and disinfecting as the board may deem necessary to determine the qualifications of the applicant.

The Board of Examiners shall consist of four members, viz.: The secretary of the State Board of Health, who shall be secretary of the Board of Examiners, and three other members, who shall be appointed by the Governor with the advice and consent of the council, one of whom shall be a member of the State Board of Health and two of whom shall be practical "undertakers" and embalmers, and who shall hold office for three years from the date of their appointment and until their successors are appointed and qualified.

Members entitled to \$5 per diem and expenses.

Examination fee, \$5; license and renewal fees, \$1.

Holders of licenses to be notified of approaching expiration.

Violations of act punishable by \$10-\$50 fine, or 10 to 60 days' imprisonment.

INTEREST.—Legal rate, 6 per cent

TIME LIMITS ON SUITS.—Accounts, 6 years; notes, 6 years.

TRANSPORTATION REGULATIONS.—Any licensed embalmer may transfer body to another town for preparation for burial or cremation, provided death was not sudden, the result of violence or of a communicable disease other than tuberculosis or pneumonia and provided such body shall be returned to the town in which death occurred within eighteen hours, or provided a permit for permanent removal, as required under the provisions of Chapter 173 of the Public Statutes, has been secured within said time. Such temporary transfer shall be made by licensed embalmers only and such licensed embalmer shall leave, in writing, with the institution from which or the person from whom any such body is received, on forms supplied by the State Board of Health, his name and address, license number and date and hour such body was delivered to him. Any body for which a burial or removal permit has been secured in accordance with the provisions of Chapter 173 of the Public Statutes, excepting the body of any person whose death occurred while suffering from any communicable disease other than tuberculosis and pneumonia, may be taken through or into another town for funeral services without additional permits. (Act approved March 7, 1923.)

For reference to additional local regulations, see Section 11 in Part I of this book.

NEW JERSEY

CEMETERY REGULATIONS.—"That the municipal authorities of any city, town and township in which any cemetery is or shall be located, shall have the power and authority to pass, alter, and repeal ordinances to regulate interments, disinterments and the manner thereof, in any cemetery in said city, town or township, and to prescribe the penalty by fine not exceeding \$50 in each case, or by imprisonment in the county jail not exceeding ten days in each case, or both, for any violation of any ordinance authorized by this act; said municipal authorities or any authorized agent thereof shall have the power and authority, at all times, to enter into and upon any cemetery within the limits of said municipality, and examine into the condition of said cemetery, and whether the ordinances regulating the same are duly enforced."

CLAIMS AGAINST ESTATES.—Judgments of record, funeral charges and expenses of last illness have priority over other claims

DEATH STATISTICS.—State Board of Health supervises. Law substantially accords with the provisions of the form set forth as a standard for comparison in the chapter on Death Statistics in Part I of this book, excepting that the requirements of Paragraph 6 of that form apparently does not apply. And, in lieu of Paragraph 1, the New Jersey law reads:

"The body of any person whose death occurs in this state, or which shall be found dead herein, shall not be interred, deposited in a vault or tomb, cremated or otherwise

disposed of, or removed from or into any registration district, unless a permit therefor shall have been properly issued by the local registrar of the registration district in which the death occurred or the body was found; *provided*, that such permit shall not be required for the removal of a body from one registration district in New Jersey to another district within the state. And no such burial or removal permit shall be issued by any registrar until, wherever practicable, a complete and satisfactory certificate of death has been filed with him as hereinafter provided; *provided*, that when a dead body is transported from outside the state into a registration district in New Jersey for burial, the transit or removal permit, issued in accordance with the law and health regulations of the place where the death occurred, shall be given the same force and effect as the burial permit herein provided for, and no local registrar shall receive any fee for the issuance of burial or removal permits under this act other than the compensation provided in Section 28; *provided further, however*, that nothing in this section shall be construed to prevent the temporary removal of any dead body to a morgue or other suitable place within the state, either within or without the registration district, upon the order of the coroner, county physician or prosecutor of the pleas prior to the issuance of a burial permit under the provisions of this act.

First violations punishable by \$5-\$50 fine; subsequent violations, by \$10-\$100 fine.

EMBALMERS' AND "UNDERTAKERS'" LICENSES.—State Board of Undertakers and Embalmers consists of five appointees of the Governor, serving for three-year terms. Members must have had at least five years' experience as practical "undertakers" and embalmers. Appointments to be made from names furnished by state association. Members entitled to reimbursement for actual traveling and other expenses incurred in performing duties.

Board required to provide a uniform examination throughout the state and a proper standard of qualification of all candidates. Examinations to be held on questions pertaining to embalming, burying and disposing of bodies, and to the shipment of bodies dead of contagious or infectious diseases, or other cause, according to the rules and regulations of the State Board of Health. Examinations to be held at least semi-annually by examiners appointed by the Board of Undertakers and Embalmers from its membership.

An unlicensed person desiring to engage in the business of undertaking and embalming must make written application to the Board for a license, accompanying the same by a certificate of three reputable persons that applicant is more than 21 years old, is of good moral character, has obtained at least a grammar school education and has served an actual apprenticeship of at least three years with a reputable "undertaker" or embalmer within or without the state. Applicant must also furnish his or her affidavit, and the affidavit of one of such certifying persons, to the effect that the applicant is more than 21 years old, has obtained grammar school education, and has served the apprenticeship above mentioned, giving the name or names of such "undertaker" or embalmer, and the duration of such service; \$5 fee must accompany application.

One who shows qualifications to act as "undertaker" and embalmer, in the judgment of the Board, after examination, shall be licensed on payment of license fee of \$5. On failing to pass applicant may attend subsequent examination without paying additional application fee. Licenses to be recorded by Board (record open to public inspection). Notice of issuance of same shall also be sent to State Board of Health. License to be registered with the Board of Health of the city, town or place where business is to be carried on, or at the place where burial permits for the municipality are issued. License to be conspicuously displayed in office or place of business.

Licenses revocable for conviction of violating act, or for violating laws respecting the burial or shipment of bodies dead of contagious or infectious diseases, for failure to register license, for failure to certify employment or discharge of employees or assistants, for violation of the criminal laws of the state, or for such continued improper conduct as has made the licensee unfitted to conduct the business of undertaking or embalming. License not to be revoked, however, until after notice and hearing before the Board.

Licenses are not assignable and no more than one person may carry on business under one license, excepting that the widow or heir of a deceased "undertaker" is not required to obtain a new license to continue the business under the supervision of one duly authorized to practice.

Unlicensed person forbidden to "transact the business of undertaking or embalming or the business of preparing or disposing of bodies by any means whatever," or to act as manager of any corporation engaged in such business or, if an officer of such corporation, to actively participate in any capacity in the actual preservation or disposal of bodies. But the foregoing provisions of this paragraph do not apply to incineration, nor to medical officers of the army, nor to the marine hospital service.

One is defined as transacting business of undertaking or embalming, within the meaning of the act, if using with his or her name the words "undertaker and embalmer," "undertaker," "embalmer," "funeral director," or any other title implying that he or she is an "undertaker" or embalmer, or both; or if, without using such title or titles, one engages in the business of undertaking or embalming, or preserving or disposing of bodies by any means excepting by incineration, either as proprietor of such business, or as manager of such business or any branch establishment thereof, whether the business is conducted in his name or not. Violation of act is punishable by a penalty of \$100.

Licenses are renewable annually on or before September 1 on payment of \$2 fee. Unless renewed license becomes void on October 1, subject to reinstatement on payment of \$10 fee before January 1.

Assistants to those engaged in the business of undertaking or embalming, etc., must be registered with the Board. Registration made on application to secretary on form prescribed by Board, and on payment of \$1 fee. Registration card shows name, age and place of employment, and the name and address of the employer. Registration effective while registrant remains with same employer. Employer of unregistered assistant subject to \$25 penalty, and employee subject to \$10 penalty.

Name of manager of business to be conspicuously displayed in place or places of business, under penalty of \$25 fine.

EMBALMING REGULATION—Employment for the purpose of "undertaking" or embalming, of arsenical or other poisonous agent, presence of which in viscera may prevent detection of criminal usage of the poison before the death, is forbidden, excepting that anatomical associations may use substances for preserving bodies in their possession.

INTEREST—Legal rate, 6 per cent.

TIME LIMITS ON SUITS—Accounts, 6 years; notes, 6 years

TRANSPORTATION RULES—1. The transportation of bodies dead of small-pox, Asiatic cholera, yellow fever, typhus fever and bubonic plague is forbidden except a license therefor is first obtained from the State Department of Health, or from an inspector or officer of said department and no license for the transportation of bodies dead of said diseases will be issued until it is shown that said bodies have been prepared in accordance with the written requirements which shall in each case be specified and made a part of said license.

When the dead body is not to remain unburied longer than 72 hours:

2. The bodies of human beings dead of any cause whatsoever other than the diseases in Rule No. 1 shall not be transported by any common carrier unless said bodies shall first have been treated as follows:

(a) Remove all garments from the dead body and apply to the surface a solution of bichloride of mercury prepared as follows: One part each of bichloride of mercury and muriate of ammonia to 1,000 parts of water.

(b) Fill all openings with cotton wool which has first been saturated with the mercurial solution and allowed to dry. The cotton should be used dry and firmly packed.

(c) The body should be placed in a coffin or casket and should rest upon a layer of sawdust or other absorbent material not less than two inches in thickness. After the body has been placed in the coffin, the coffin should be securely closed.

(d) The coffin or casket containing the dead body should be placed in an outer box, strongly made of seven-eighths boards.

When the dead body is to remain unburied longer than 72 hours, and in all cases of diphtheria, membranous croup, scarlet fever, chicken-pox, measles and erysipelas:

3. After being prepared as required by Rule 2, the dead body, contained in the coffin or casket, should be placed in a substantial metal-lined box, and said metal lining should be made air-tight by soldering all the joints and seams.*

4. In cases of dangerous communicable diseases the body should not be accompanied by persons or articles which have been exposed to the infection of the disease unless a certificate has been issued by the local board of health, or its authorized officer, showing that said persons or articles have been rendered free from infection.

5. Every dead body transported out of the state must be accompanied by a transit permit, showing name of deceased, date of death, age, place of death, cause of death, and the point to which the body is to be transported, and also the name of the person authorized to accompany the body, if any person is so authorized. The transit permit shall be securely attached to the outside of the coffin box and shall not be mutilated in the process of being attached.

*The preparation of dead human bodies for transportation by public carriers as provided for in these rules does not preclude the employment of additional precaution against the decomposition of the remains.

6. No disinterred body shall be offered for transportation to any common carrier unless the disinterment has been authorized in writing by the local board of health, nor unless written consent for such transportation shall have been obtained from the health authorities of the locality to which the said disinterred body is to be consigned. All disinterred bodies shall be enclosed in an air-tight metal-lined box, and all joints and seams in said metal-lining shall be soldered. Bodies placed in receiving vaults shall be treated in the same manner as bodies buried.

7. Dead human bodies which are prepared in New Jersey for transportation within or across the state by common carrier, and which are offered for shipment at some point within the state, shall not be treated with injections of arsenical or other poisonous solutions, and no such solution shall be introduced into the blood vessels or cavities or beneath the surface of the skin of any such dead body.

8. Permits for disinterment of dead human bodies shall be void after 72 hours have elapsed from date of issue.

9. In procuring transit permits for disinterred dead human bodies the undertaker shall swear or affirm that the remains have been prepared in accordance with the rules of the State Department of Health.

These permits or burial or removal permits are not to be used as authority for the removal of disinterred bodies from one district to another either within or without the state. A special form entitled "Transit Permit for Disinterred Body" should be secured from the local registrar or the State Department of Health, Trenton, N. J.

In all cases where bodies are forwarded by public carrier, notice should be sent by telegraph to the health officer at destinations, stating the date and train on which the body may be expected. This notice should be sent by, or in the name of the health officer at the initial point, and is designed to enable the health officer at the destination to take all necessary precautions at that point.

NEW MEXICO

CLAIMS AGAINST ESTATES—Claims for funeral expenses and last illness rank next to administration expenses in right to priority of payment.

DEATH STATISTICS—Regulations are substantially the same as those set forth in the form of Vital Statistics provisions adopted as a standard for comparison in the chapter on Death Statistics in Part I of this book.

EMBALMERS' LICENSES—State Board of Embalmers consists of five members appointed by the Governor for rotating terms of five years each, \$5 per day and railroad fare allowed; four-day limit for each examination. Removable for neglect of duty, incompetency or improper conduct. Annual meeting to be held at same time and place as annual meeting of New Mexico Funeral Directors' Association, but called one day earlier. Additional meetings may be called.

Unlicensed person desiring to practice embalming must apply in writing to Board, paying \$25 fee. License issues on the Board finding on examination that the applicant is of good moral character and possessed of skill and knowledge of embalming and the care and disposal of the dead, and has reasonable knowledge of sanitation and disinfection of bodies, apartments, etc. Grade of at least 75 per cent must be attained.

Licenses to be registered with local Board of Health, or, if no such board, with the Clerk of the Town or County Court, and conspicuously display same in place of business. Licenses renewable annually on payment of \$2 fee.

Practicing, or holding self out as practicing, by unlicensed person punishable by \$5-\$100 fine.

Temporary licenses may be granted to holders of licenses of other states.

BOARD REGULATIONS—Application must show length of time engaged in undertaking business. Applicant must be at least 21 years old and must have embalmed at least 25 bodies, as shown by licensed embalmer's affidavit. Applicant must have had three years' practical experience in embalming under the personal supervision of a licensed and practicing embalmer. An applicant who has taken a course in an embalming school recognized by this Board, upon presentation of proper affidavits from such school, will be given credit on his experience requirement for the actual time spent in such institution. Certificates from correspondence schools will not be recognized.

Beginning January 1, 1922, any person engaged as an assistant to, or as an apprentice under a licensed embalmer shall file a verified statement accompanied by a fee of \$1 with the State Board of Embalmers, designating the date on which his engagement or employment began and the name of the licensed embalmer with whom he is engaged as assistant or apprentice; and if he is employed or engaged during such period of three years with more than one such embalmer he shall designate in each such subsequent statement the date of the expiration of his employment or engagement next preceding.

Provided, that assistants who have already entered upon their term of apprenticeship at the time of the taking effect of this rule may, in lieu of the statement herein required file a verified statement with the secretary of the Board accompanied with a fee of \$1, setting forth such facts as will enable the Board to determine whether such person has served for three full years as an apprentice. No applicant who cannot show himself as having served an apprenticeship of three full years as herein provided or who has not been registered as an apprentice for a period of three full years, will be eligible for examination. All statements herein provided for shall be made upon forms to be provided by the Board and shall be sworn to. It shall be the duty of all licensed embalmers in the State of New Mexico to give to apprentices working under them an affidavit, stating when such apprenticeship started, and the duration thereof.

Embalmers' written examination covers following subjects: Anatomy of principal organs of body, the cavities of the human body, arterial and venous system; blood and discoloration; bacteriology; chemistry of embalming, disinfecting and disinfectants; transportation laws and rules, and arterial and cavity embalming. Oral examination on the following subjects: Embalming special cases, contagious and infectious diseases; shipment of dead bodies. Applicant must pass a practical examination upon a cadaver.

HEALTH REGULATIONS—Unlawful to carry through streets, roads, etc., or into a church a body dead of contagious disease with the coffin open and the body exposed.

INTEREST.—Legal rate, 5 per cent.

JURY SERVICE—Licensed funeral directors and embalmers exempted.

MISCELLANEOUS REGULATIONS—Unlawful to embalm body when any fact within the knowledge or brought to the attention of the embalmer is sufficient to arouse the suspicion of crime in connection with the cause of death of the deceased, until permission of the coroner, or justice of the peace (if there is no coroner) has first been obtained. Fine, \$25-\$100.

All licensed embalmers shall use shipping pasters, to be furnished by the Board of Embalmers, said pasters to be approved by the State Board of Health.

All licensed funeral directors and embalmers are exempt from jury service.

TIME LIMITS ON SUITS—Accounts, four years, notes, six years.

TRANSPORTATION RULES.—See Section 11 in Part I of this book.

NEW YORK

BURIAL DUTIES, OFFENSES, ETC.—Statute accords right to dispose of one's own body by will, etc. Bodies must be decently buried within reasonable time after death, subject to authorized dissection, etc. Dissection forbidden except as authorized by coroner, etc., or by next of kin, etc., to determine cause of death. Arrest or detention of body for debt, etc., prohibited. One who, without authority of law, obstructs or detains a person carrying or accompanying a body to place of burial is guilty of a misdemeanor.

CLAIMS AGAINST ESTATES—Funeral bills have priority over other claims against estates.

A decision of the Surrogate's Court for Bronx County, New York, draws attention to the fact that, under a law which became effective in that state in 1914, where an executor or administrator challenges the reasonableness of a claim against an estate for funeral expenses, hearing on the claim must be deferred until judicial settlement of the executor's or administrator's account. (In re Lucas Estate, 155 New York Supplement, 1017.)

The funeral director who had charge of the funeral arrangements in this case assigned his claim to one of the heirs, who brought a proceeding in the Surrogate's Court to compel allowance of the claim. There was no proof that the administratrix had received funds applicable to payment of the claim, but it did appear that there were available funds in the hands of the city chamberlain.

The court said: "The purpose of the amendment . . . is that if the claim is disputed it ought not to be tried until all the interested parties are in court; hence, in such case, the trial is to be postponed until judicial settlement," that is, until final accounting by the administrator. The court holds also that this amendment applies to a claim for services rendered before the amendment took effect, as well as to claims subsequently incurred.

For additional cases relating to claims against estates for funeral expenses, see the chapter on Liability for Funeral Expenses in Part I of this book.

DEATH STATISTICS—State Department of Health has charge of registering births and deaths. The full text of the law appears as the second Article XX of the Public Health Law. Sections 375-381, 385 contain provisions essentially the same as

those set forth in paragraphs 1-5, 7-9 of the form of standard type of Vital Statistics Law appearing in the chapter on Death Statistics in Part I of this book, which see

"Sec. 379 DUTIES OF UNDERTAKER.—In each case the undertaker or person having charge of the corpse, shall file a certificate of death with the registrar of the district in which the death occurred and obtain a burial or removal permit prior to any disposition of the body The undertaker shall deliver the burial permit to the person in charge of the place of burial, before interring or otherwise disposing of the body; or shall attach the removal permit to the box containing the corpse, when shipped by any transportation company; *said permit to accompany the corpse to its destination, where, if within the State of New York, it shall be delivered to the person in charge of the place of burial.*

"Sec. 380. DUTIES OF UNDERTAKERS; INTERMENT WITHIN THE STATE.—If the interment, or other disposition of the body, is to be made within the state, the wording of the burial or removal permit may be limited to a statement by the registrar, and over his signature, that a satisfactory certificate of death, having been filed with him, as required by law, permission is granted to inter, remove or dispose otherwise of the body, stating the name, age, sex, cause of death, and other necessary details upon the form prescribed by the Commissioner of Health

"Sec. 381. INTERMENTS.—No person in charge of any premises on which interments or cremations are made shall inter or permit the interment of other disposition of any body unless it is accompanied by a burial, cremation or transit permit, as herein provided. Such person shall endorse upon the permit the date of interment, or cremation, over his signature, and shall return all permits so endorsed to the registrar of his district within seven days from the date of interment or cremation. He shall keep a record of all bodies interred or otherwise disposed of on the premises under his charge, in each case stating the name of each deceased person, place of death, date of burial or disposal, and name and address of the undertaker; which record shall at all times be open to official inspection, provided that the undertaker or person having charge of the corpse, when burying a body in a cemetery or burial ground having no person in charge, shall sign the burial or removal permit, giving the date of burial, and shall write across the face of the permit the words, "No person in charge," and file the burial or removal permit within three days with the registrar of the district in which the cemetery is located"

Sextons and undertakers violating the law relative to the return of permits are liable to a penalty of not less than five dollars nor more than fifty dollars for the first offense. Local registrars are required, under penalty, to report violations thereof.

EMBALMERS' AND "UNDERTAKERS'" LICENSES.—Article 14 of the Public Health Law provides for a "Board of Embalming Examiners of the State of New York," consisting of five members serving three-year terms. Members removable for continued neglect of duties, incompetency or improper conduct. They must have at least five years' experience as "undertakers" and embalmers and be duly licensed in each capacity. Members entitled to annual salary of \$200 (Secretary, \$1,200) and necessary expenses.

The Board shall ascertain what constitute the best tests for determining whether life is extinct, and shall prescribe the using of such tests, before embalming, as they may deem necessary; and all persons thereafter embalming the dead body shall apply such tests prescribed before injecting any fluid into any body. The Board may make rules regulating the practice of embalming and undertaking, subject to the approval of the Department of Health, and may investigate alleged violations of laws and regulations applying to embalming and undertaking. "It may revoke any license of an undertaker or embalmer upon proof that the same was procured by fraud or that the holder thereof has been convicted of a felony or has violated any of the provisions of the public health law, the general rules and regulations promulgated by the State Commissioner of Health, the rules and regulations of the State Board of Embalming Examiners, the sanitary code established by the Public Health Council of the State of New York or of any statute relating to undertaking or embalming or vital statistics, which now is or may be enacted, promulgated or established"

To secure uniform examination throughout the state, and a proper standard of qualification for all candidates, the Board shall, from time to time, submit to the State Department of Health, lists of examination questions for the thorough examination of applicants for license as embalmers, in accordance with the rules and regulations made, adopted and approved as hereinbefore prescribed. The questions shall pertain to embalming, sanitation and disinfection. State Department of Health appoints times and places for examination, which shall be at least each three months, having regard to the convenience of applicants and the public service. The Department prescribes the mode

of examination and appoints the examiner. Questions selected by the Department from lists submitted by the Board, with such additional questions as the Department may deem proper.

Applications for embalmers' licenses must be in writing and filed with the Board, with a fee of \$5 and a certificate by some reputable person that applicant is more than 21 years of age, of good moral character, and has obtained a common school education.

Examination questions and answers to be delivered by the examiner to the Board, which transmits, without unnecessary delay, to the Board of Health a report signed by the President and Secretary, stating in detail the result of the examination of each applicant. The report must embrace the examination papers, questions and answers thereto, and shall be kept for reference and inspection among the public records of the Board of Health. The reports are to be examined and verified by the Board of Health, which recommends for licensing by the Board of Embalming Examiners those applicants who shall, in their judgment, be duly qualified to practice embalming. License fee, \$10.

Persons not already licensed and desiring to engage in the business and practice of undertaking shall make a written application to the Board for examination for an "undertaker's" license. The application shall be accompanied with the certificate of two reputable persons, not related to the applicant, that the applicant is over twenty-one years of age, is of good moral character and has at least a common school education. The applications shall also be accompanied with the payment of a fee of five dollars. Upon the applicant's passing a satisfactory examination in sanitation, disinfection, preparation and care of human dead bodies for burial or transportation, and in the laws and health regulations applicable to the care, interment and cremation of the dead, the Board shall issue a license to engage in undertaking, on payment of a further fee of \$10.

If a firm or corporation desires to engage in undertaking at least one member and the manager of each place of business conducted by a corporation shall be a licensed "undertaker"; and no member of a firm whose duties engage him in the care, preparation, disposal and burial of dead human bodies shall discharge the duties of his employment unless he is licensed.

One licensed in another state making substantially equivalent requirements for licensing embalmers or "undertakers" may be licensed in the discretion of the Board on paying application and license fees.

Licenses must be registered with the local Board of Health and must be conspicuously displayed in places of business. Licenses not assignable, and not more than one person shall practice embalming under one license. This section shall not apply to any personal representative of any deceased undertaker to whom a license shall have been issued under this article, who engages in the business of undertaking and embalming with a person duly authorized to practice the same under the provisions of this article.

No person who has not been licensed as herein specified shall transact or practice or hold himself or herself out as transacting or practicing the business or practice of embalming of dead human bodies within this state, except that nothing in this article contained shall apply to commissioned medical officers in the army of the United States, or in the United States marine hospital service while so commissioned, or anyone actually serving as a member of the resident medical staff of any legally incorporated hospital, or to any person duly licensed to practice as a physician or surgeon in this state.

Any person who shall engage in the business or practice of embalming or undertaking in violation of any provision of this article shall be liable to a penalty of one hundred dollars and shall also be guilty of a misdemeanor. Each day during which or any part of which any such prohibited business or practice is continued shall be deemed a separate violation. One or more penalties for one or more violations by the same person within any period of time may be sued for and recovered.

HEALTH REGULATIONS—"It shall be the duty of every undertaker taking charge of the preparation for burial of the body of any person to ascertain whether such person died of a communicable disease and if such person died of Asiatic cholera, diphtheria, epidemic cerebrospinal meningitis, glanders, plague, scarlet fever, smallpox, or typhus fever it shall be his duty to cause it immediately to be wrapped in a sheet saturated with disinfecting solution and promptly thereafter placed in a coffin or casket, which shall then be immediately and permanently closed. This regulation shall not be construed to prohibit the embalming of any such body, but the undertaker shall cause such embalming to be done immediately upon taking charge of the body, except that, when a permit for embalming is required, this shall not proceed until the receipt of such permit. But immediately after the embalming he shall cause such body to be wrapped in a sheet and placed in a coffin or casket as hereinabove directed.

"After handling, embalming, or preparing for burial the body of a person dead of any of the communicable diseases enumerated in this regulation, such parts of the persons, garments, and utensils or other articles of the undertaker or his assistants, as may have

been liable to contamination with infective material, shall be immediately cleansed or disinfected or sterilized in the manner prescribed by the rules and regulations of the State Department of Health."

Above regulation in effect throughout the state, except the city of New York.

"A public or a church funeral shall not be held of any person who has died of diphtheria, measles, scarlet fever, smallpox, or typhus fever, unless the body is enclosed in a properly sealed casket and the consent of the local health officer has first been obtained."

INTEREST—Legal rate, 6 per cent

JURY SERVICE—Licensed embalmers actually engaged in profession as means of livelihood exempt

TIME LIMIT ON SUITS—Accounts and ordinary notes, 6 years.

TOLL ROADS—Free to persons going to and from funerals

TRANSPORTATION REGULATIONS—(Not applicable to New York City):

Rule 1. A transit permit and transit label issued by the local registrar of vital statistics must accompany each dead body transported by a common carrier

The transit permit shall state the date of issuance, the name, sex, race and age of the deceased, and the cause and date of death. The transit permit shall also state the date and route of shipment, the point of shipment and destination, the method of preparation of the body, and shall bear the signature of the undertaker and the signature and official title of the officer issuing the permit.

The transit label shall state the date of issuance, the name of the deceased, the place and date of death, the name of the escort or consignee, the point of shipment and destination; and shall bear the signature and official title of the officer who issued the transit permit. The transit label shall be attached to the outer box or case.

Rule 2. The transportation by common carriers of bodies dead of any diseases other than those mentioned in Rule 3 shall be permitted only under the following conditions:

(a) The coffin or casket shall be encased in a strong outer box made of good sound lumber, not less than seven-eighths of an inch thick. All joints shall be securely put together and the box tightly closed. Either the coffin or casket, or the outer box or case, shall be watertight.

(b) When the destination cannot be reached within 60 hours after death, all body orifices shall be closed with absorbent cotton, and the body placed at once in a coffin or casket which shall be immediately closed and the coffin or casket shall be encased in a strong outer box made of good sound lumber not less than seven-eighths of an inch thick. All joints must be securely put together and the box tightly closed, and either the coffin or casket, or the outer box or case, shall be watertight.

Rule 3. The transportation by common carrier of bodies dead of smallpox, plague, Asiatic cholera, typhus fever, diphtheria (membranous croup, diphtheritic sore throat), scarlet fever (scarlet rash, scarlatina), shall be permitted only under the following conditions:

All body orifices shall be closed with absorbent cotton, the body shall be enveloped in a sheet saturated with an effective disinfecting fluid and shall be placed at once in a coffin which shall be immediately and permanently closed. The coffin or casket shall be encased in a strong outer box made of good sound lumber, not less than seven-eighths of an inch thick, all joints of which shall be securely put together and the box shall be tightly and permanently closed. Either the coffin or casket, or the outer box or case, shall be watertight.

Rule 4. No dead body shall be disinterred for transportation by common carrier without the previous consent of authorities having jurisdiction at the place of disinterment. The transit permit and transit label shall be required as provided in Rule 1, and Paragraph (a) of Rule 2 shall apply.

Rule 5. Every outside case holding any dead body offered for transportation by common carrier shall bear at least four handles and when over 5 feet 6 inches in length, shall bear six handles.

NEW YORK CITY

BOARD OF HEALTH PROVISIONS—"Sec. 46 *Undertaking Business Regulated*—No person, firm or corporation shall carry on or engage in the business or practice of undertaking in the City of New York without a permit therefor issued by the Board of Health or otherwise than in accordance with the terms of said permit and the regulations of said Board."

Regulation 1. Application for permits—Applications to carry on or engage in the business of undertaking in the City of New York shall be made to the Bureau of Records of the Department of Health upon blank forms furnished for such purpose. If the applicant for a permit is an individual, such application shall be signed by such individual; if such application is made by a partnership, it shall be signed by each part-

ner; and if such application is made by a corporation, it shall be signed by an officer thereof, who shall file with said application the authority of the corporation to act in its behalf. Where the applicant conducts business in more than one place, an application shall be filed for each such place of business, and where the business is conducted by a managing agent of the applicant, his or her name, residence and undertaker's state license number and such other and further information as may be deemed essential and desirable in each case shall be furnished the Registrar of Records of the Department of Health. Where such managing agent shall leave its employ, such corporation shall immediately notify the Bureau of Records of the Department of Health thereof and shall file with said Bureau the name, residence and undertaker's state license number of the successor of such managing agent.

Regulation 2 Permits.—No permit will be issued by the Board of Health unless the applicant is licensed to engage in the business or practice of undertaking, as provided for by Section 295 of the Public Health Law of the State of New York, constituting Chapter 230, Laws of 1917, nor will any such permit be issued to a corporation where the applicant maintains more than one place of business, unless the manager of each such place of business is a licensed undertaker, as provided by said Section 295 of the Public Health Law. No permit to carry on the business of undertaking will be issued to an applicant who has not established a place of business within the boundaries of the City of New York and who does not by printed signs or displays hold himself out to the public as a licensed undertaker. Permits issued by the Board of Health under and by virtue of the provisions of Section 46 of the Sanitary Code may be revoked, in the discretion of the Board of Health. Holders of permits to carry on and engage in the business of undertaking in the City of New York are required to be familiar and thoroughly conversant with the provisions of the Sanitary Code and the Regulations of the Board of Health governing the removal, interment, cremation, or other disposition of the remains of deceased persons, and any violation thereof will be deemed sufficient cause for revocation of said permit, or criminal prosecution, or both. A violation of the provisions of the Sanitary Code or the regulations of the Board of Health is a misdemeanor and may subject the offender to a fine of five hundred dollars, one year in prison, or both (As amended June 3, 1920.)

Regulation 3. Burial Permits.—No permit to bury the remains of the dead body of a human being will be issued unless the undertaker applying for such permit shall sign his name and address on the death certificate in the spaces set apart for such purpose and shall certify, in writing, that he has been employed by the nearest surviving relative or next of kin. Where a friend, not a relative or a duly authorized person, claims the body, a permit for burial shall not be granted unless and until the Commissioner of Health, the Registrar of Records, or an Assistant Registrar of Records, shall approve the application for a burial permit in every such instance.

Resolution of Board of Health, adopted November 23, 1920, prescribes the following procedure to be followed in the foregoing regulation:

1. The provisions of the regulation, particularly that portion relating to the personal signature of the undertaker, shall be construed to mean the personal signature of the undertaker or his duly authorized agent, as provided for in the following procedure:

(a) Such application shall in the case of a corporation be signed by the person or persons designated by the Board of Directors of the corporation to sign its name to such application. In such instance, a duly authorized copy of the resolution of the Board of Directors signed by the secretary thereof shall be filed with the Registrar of Records. The number of persons to whom such authorization may be given shall be limited in the same manner and to the same extent as in the instance of an individual person, partnership or firm, as hereinafter more particularly mentioned.

(b) Such application for a permit in the case of a partnership may be signed by a partner, or if the circumstances warrant, by a responsible person in the employ of the partnership or if the circumstances warrant, by two or more members of the partnership. In all such instances, a power of attorney signed by all members of the partnership shall in each instance be filed with the department.

(c) Such application for a permit when made by an individual shall be signed by the individual, or, if the circumstances warrant, by a responsible person or persons authorized by such individual to sign his name to such application. In every such instance the individual undertaker shall file a power of attorney with the Department of Health.

2. All powers of attorney herein referred to shall be upon forms furnished for such purpose by the Department of Health and shall specifically state that the person or persons giving such power of attorney assume legal responsibility for the acts of the person to whom such power of attorney is given, in accordance with the provisions of the Sanitary Code and the Regulations of the Board of Health.

3. Where a corporation designates a person or persons to sign its name to an application for a burial permit, such designation in the form of a resolution adopted by the board of directors of such corporation shall specifically mention that the corporation assumes legal responsibility for the acts of the person or persons so designated and such acts shall, for the purpose of the provisions of the Sanitary Code and the regulations of the Board of Health, be construed as the act or acts of the corporation.

4. The Department of Health reserves the right to reject any power of attorney or designation made by a corporation where the person named in such power of attorney or such designation is not, in the opinion of the Department of Health, a responsible person competent to perform the duties imposed by regulation 3.

5. Before a power of attorney or a designation by a corporation shall be accepted, the following information shall be supplied to the Registrar of Records by the person, firm or corporation submitting such power of attorney or designation:

(a) That the person is of suitable age and discretion and is qualified to perform the duties imposed by Regulation 3;

(b) That in the event the person named in such power of attorney or designation is an employee of the person, firm or corporation, that the reasonable permanency of his employment be established to the satisfaction of the registrar.

6. The person to whom the power of attorney has been granted or who has been designated to act in behalf of the corporation shall file with the Department of Health over his signature a statement to the following effect:

"I, the undersigned person named in a power of attorney issued by..... Resolution adopted by do hereby stipulate and agree to be responsible for all statements or information contained in any application for a permit to dispose of the dead bodies of human beings required to be filed by the provisions of Regulation 3 of the regulations governing the undertaking business in the City of New York, made by me in behalf of..... for the purpose of securing such permit.

"Sworn to before me this.....day of....."

7. For the guidance of the Registrar of Records and Assistant Registrar of Records, the number of powers of attorney or designations hereinbefore referred to shall be governed as far as is practical by the following principles:

(a) The number of powers of attorney or designations hereinbefore referred to permitted to be filed shall depend upon the volume of business and the number and locations of places of business;

(b) Where an undertaker, whether a person, firm or corporation, maintains one place of business, not more than one power of attorney or two designations shall be accepted, unless it is established to the satisfaction of the Commissioner of Health or the Registrar of Records, that it is necessary, in order to conduct the business, that more than such number is required to transact the business;

(c) Where an undertaker, whether a person, firm or corporation, conducts and maintains more than one place of business, the number of powers of attorney or designations shall not exceed two for each such additional place of business;

Provided, however, the provisions of this subdivision shall not be construed as limiting the discretionary power of the Commissioner of Health or the Registrar of Records to limit the designation of more than one person in any such instance.

8. The power of attorney hereinbefore referred to in this procedure shall be taken to mean a power of attorney granted for a period of one year unless otherwise revoked by the person or firm issuing the same.

9. The designations referred to shall be for a period of one year unless otherwise revoked by the corporation issuing the same.

10. The Commissioner of Health or the Registrar of Records may, in their discretion, cancel at any time the approval of any power of attorney or designation and refuse to issue permits the application for which has been signed by the person to whom such power of attorney or designation has been issued.

11. Temporary powers of attorney or temporary designations may, in the discretion of the Commissioner of Health or the Registrar of Records, be accepted and approved for periods less than one year where, in case of sickness, or absence from the city for limited periods of time, it is impossible for the undertaker to sign the application for permits for the disposal of the dead bodies of human beings.

12. The purpose of permitting the filing of powers of attorney and the designations for persons to sign the name of the person, firm or corporation, to an application for a permit does not relieve the undertaker, if an individual, or the member of a firm, or the officer of a corporation, from signing all applications for such permits, except as hereinafter provided.

13. The object of the power of attorney and designation is not to relieve the individual upon whom rests the obligation to sign such applications for permits from his legal duties under the provisions of the Sanitary Code, but merely to provide a means whereby his business will not be unnecessarily interfered with

14. The individual undertaker holding a permit from the Board of Health must sign all applications for permits except where he is absent from the city, or is ill, or he finds it absolutely impossible for some other and adequate reason to personally sign such application. It is only in such instances that his signature should be signed by the person mentioned in the power of attorney.

15. So, also, in the case of a designation given by a corporation, the officer of such corporation should sign all applications for permits except where in like manner he is ill, absent from the city, or there is some necessary and adequate reason rendering it impossible for him to sign the name of the corporation personally

16. The approval of such powers of attorney and designations by the Commissioner of Health or the Registrar of Records is conditioned on the faithful compliance with this condition, and where an undertaker is found to transact all his business by and through an agent with the Department of Health, this fact may be sufficient to warrant the revocation of such approval and the presentation of a complaint to the Board of Health for its consideration

Regulation 4. Requirements as to unclaimed or unidentified dead.—Whenever a person dies in the City of New York, and the dead body of such person is not claimed by a relative, any duly authorized person, or a friend, and has been removed to the city morgue, before the death certificate issued by a medical examiner or a physician in attendance upon the deceased at the time of his or her death, shall be delivered to an undertaker by the superintendent of the city funeral home, such undertaker shall file with the superintendent . . . an affidavit or affidavits establishing his authority to act as undertaker. If the person giving such authorization to the undertaker be a friend and not a relative, and where the obligation rests upon the public administrator to pay the expenses for the burial or cremation of remains of such deceased person, such affidavit or affidavits . . . shall be approved by the public administrator before the death certificate shall be delivered into the possession of the undertaker by the superintendent . . . The Commissioner of Health and the Registrar of Records of the Department of Health of the City of New York are each hereby vested with power and authority to withhold the issuance of any burial or removal permit in any case regulated by the provisions of this regulation where, in the exercise of their discretion, they or either of them determine it advisable or necessary to institute an investigation to ascertain whether or not the facts required to be embodied in the certificate of death, in accordance with the provisions of Section 32 of the Sanitary Code, are authentic and correct. Provided, however, the issuance of such burial or removal permit shall not be withheld for a longer period than 72 hours after application therefor has been made to the Department of Health

Regulation 5. PLACE TO OBTAIN PERMITS.—Permits for the removal or disposal of the remains of persons deceased in this city must be obtained during regular office hours at the office of the borough in which the death took place, provided, however, in cases of absolute necessity, permits may be obtained after regular office hours at the central office in the Borough of Manhattan, between the hours of 6 p. m. and 12 m. daily.

Regulation 6. PERMITS ISSUED IN OTHER CITIES TO BE ACCEPTED.—Burial or cremation permits issued by Boards of Health in any state of the United States other than that of the City of New York must be accepted by superintendents of cemeteries or crematories, provided the name of the cemetery or crematory is stated thereon, and if not stated said permit must be exchanged for one issued by the Board of Health of this city

Regulation 7. PROCEDURE IN DEATHS FROM CONTAGION—When the body of a person dead of a contagious disease is to be transported to any place outside the city limits, the undertaker must notify the Department of Health in order that the Department may send one of its inspectors to determine who may accompany the said remains without danger to the public health during the journey or at the city or place of destination. And, furthermore, the undertaker shall notify, by telegraph, the health officer of the city or place of destination that the body is about to be shipped and such notice shall state name of the deceased, the cause of death, the date of death, and the time of arrival. When the burial or cremation is to take place in a cemetery or crematory immediately adjacent to the City of New York and the body is to be transported directly to the said cemetery or crematory by hearse, and at no time during said transportation placed in a railroad car or other public conveyance, the last rule need not be complied with

Regulation 8 REMAINS OF PERSONS DECEASED FROM INFECTIOUS DISEASES, CASKETS TO BE OFFICIALLY SEALED.—All caskets, coffins, or other receptacles containing the remains of persons deceased from smallpox, diphtheria (croup), scarlet fever, yellow fever, typhus fever, plague, Asiatic cholera, measles, or other infectious diseases, shall be sealed immediately by the undertaker, or other person charged with the duty of enclosing the remains, with the official seal provided for that purpose by the Department of Health, and upon said seal shall be stated the day and hour of sealing, and the name and number of license of the undertaker.

Regulation 9 WICKER BASKETS AND OTHER CONTAINERS TO BE METAL-LINED.—Wicker baskets or other containers, used by undertakers in the removal of dead bodies . . . , shall be provided with an inner watertight lining of metal so constructed that said lining shall extend to the point of contact between the lid and body of the container.

Regulation 10. REMOVAL PERMITS.—A transit permit for the removal of the dead body of a human being to premises other than the place of final disposal is limited by its terms and does not authorize burial, cremation, or other final disposal.

Sec 37 TRANSIT PERMITS.—No captain, agent, or other person, having charge of or attached to any ferry-boat or sailing or other vessel, or any person in charge of any public or private vehicle or conveyance, shall convey or allow to be conveyed, thereon or therein, from, through, into, or within the City of New York, nor shall any person carry or convey, or allow to be carried or conveyed, in any manner, from, through, into, or within the said city, the dead body of any human being, or any part thereof, without a permit therefor issued by the Board of Health or otherwise than in accordance with the terms of such permit and the regulations of said Board; provided, however, that the same effect shall be given, under this section, to a transit permit issued by Boards of Health, health officers, registrars, or other duly authorized persons, in any state of the United States whose rules and regulations for the transportation of the dead shall, when such permit is issued, be in material accord with those at the time in force in the City of New York, as though such permit were issued by the Board of Health of the City of New York (S C Sec 163.)

Sec 38. No transit permit shall be granted for the removal, burial, or other disposition of the remains of any person who shall have died in the City of New York unless a certificate of death, prepared upon a form furnished by the Department of Health and signed as hereinafter provided, shall have been filed in the said department.

Such certificate must be signed by a physician upon whom has been conferred the degree of doctor of medicine, or by a physician who has been granted a license after a medical examination conducted by the New York State Board of Medical Examiners, the questions for which have been prepared by the Board of Regents of said state

Sec. 39 BODIES NOT TO BE RETAINED OR EXPOSED.—The manager or superintendent of any private or public hospital wherein a funeral home is not maintained for the temporary retention of the remains of persons deceased therein shall forthwith permit the removal of the remains of such deceased persons upon presentation by an undertaker of a removal permit duly issued by the Department of Health (As amended August 10, 1922)

Sec. 40 BODIES OF HUMAN BEINGS NOT TO BE RETAINED UNBURIED.—No person shall retain unburied the dead body of any human being for a longer period than four days after the death of such person, without a permit from the Sanitary Superintendent, an Assistant Sanitary Superintendent, or the Director of the Bureau of Infectious Diseases, which permit shall specify the length of time during which such body may be so retained. (S. C. Sec. 165)

Sec 41 DUTY OF PERSONS DISCOVERING BODIES TO COMMUNICATE WITH DEPARTMENT OF HEALTH.—It shall be the duty of every person who has discovered or seen the body of a dead human being or any part thereof (if there is reason for such person to think that the fact of the death, or the place of such body, or part thereof, is not publicly known), to immediately communicate to the Department of Health the fact that such person has discovered or seen such body, the place where, and time when, such body was discovered or seen, and (if known) the place where such body is or may be found, and any fact or facts by which such body may be identified or the cause of death ascertained. (S. C. Sec. 166)

Sec 42. INTERMENT, CREMATION, OR OTHER DISPOSITION; PERMIT REQUIRED.—No interment, cremation, or other disposition, of the dead body of any human being, shall be made in the City of New York without a permit therefor issued by the Board of Health or otherwise than in accordance with the terms of such permit and the regulation of said Board, and the said body shall be placed in a metallic or tin-lined box, or a box so constructed as to prevent the issuance of any liquids there-

from. No sexton or other person shall assist in, assent to, or allow the interment, cremation, or other disposition of any such body, or aid the preparation of or assist in preparing any grave or place of deposit for any such body, unless a permit shall have been issued, as hereinbefore provided, authorizing such interment, cremation, or other disposition of such body; and it shall be the duty of every person who shall receive any such permit to return such permit to the Department of Health in accordance with the regulations of the Board of Health.

Sec 43. (Requires sextons to register with Department of Health.)

Sec. 44. (Persons in charge of cemeteries, crematories, etc., to make returns as to disposal of bodies, etc.)

Sec 45. **CREMATORIES, BURYING-GROUNDS, CEMETERIES, TOMBS, AND VAULTS; PERMIT REQUIRED TO ESTABLISH, TO BURY, AND TO OPEN RECEPTACLE, BURIAL OF DEAD BODY RESTRICTED**—No new crematory, burying-ground, cemetery, tomb, or vault to be used for the reception of dead human bodies shall be established, nor shall any dead body, or the remains thereof, be placed in any existing burying-ground, vault, tomb, or cemetery, in the City of New York, nor shall any grave, vault, tomb, or other receptacle in which there is a human body or any part thereof, be opened, exposed, or disturbed, without a permit therefor issued by the Board of Health or otherwise than in accordance with the terms of such permit and the regulations of said board, and every body buried in any such place shall be buried to the depth of six feet below the surface of the ground, and four feet below any closely adjacent street, except that, in the Borough of Queens, a body may be buried to the depth of three feet below the surface of the ground. (S. C. Sec. 168.)

REGULATIONS APPLYING TO THE PRECEDING SECTIONS 37, 42, 44 AND 45—Regulation 1. No permit for removal, interment, cremation, or other disposal of the remains of deceased persons will be issued unless a proper certificate of death filled out in black ink is filed in the Bureau of Records.

Regulation 2. No certificate of death will be accepted which is illegible or imperfectly filled out, or which has been corrected, interlined, or altered in any manner. No certificate of death will be accepted upon which the cause of death is indefinite. Such certificates will be returned to the physicians signing them for additional information, correction or a new certificate.

Regulation 3.—No certificate of death will be accepted unless the physician signing same is registered in the Bureau of Records either as a practicing physician or as an interne in an institution

Regulation 4.—Superintendent or keepers of cemeteries and crematories shall not permit human remains to be interred or cremated except in accordance with the conditions stated upon the permit presented at the time of such burial or cremation; and no permit shall be accepted by them which has been altered or changed in any manner whatsoever.

Regulation 5 (Relates to establishment of cemeteries, etc.)

Regulation 6—No body shall be retained in the general reception vault in any cemetery for a longer period than ten days unless special permission therefor is granted by the Sanitary Superintendent, an Assistant Sanitary Superintendent, the Registrar of Records, or an Assistant Registrar of Records of the Department of Health, and such vaults must at all times be kept in good sanitary conditions.

Regulation 7—All general vaults in cemeteries used for the temporary reception and holding of the remains of deceased persons must be provided with crypts or cells constructed so that they may be hermetically sealed when the remains of deceased persons are placed therein. Where such crypts or cells are used as a place of deposit for the remains of deceased persons they shall be hermetically sealed immediately after such remains are deposited therein. Provided, however, the provisions of this regulation shall not apply where the remains of a deceased person are enclosed in a hermetically sealed, metallic, or stone coffin or case (As amended by the Board of Health, March 27, 1919)

Regulation 8 **NOTICE OF SALE OR LEASE OF GROUND TO SOCIETIES, CORPORATIONS, ETC**—No plot, range, or section situated within the boundaries of any existing cemetery shall be let, leased, transferred, or sold to any society, organization, lodge, or other corporate body unless notice of such transfer, lease or sale shall have been given to the Board of Health

Regulation 9 **LISTS OF BURIALS TO BE FURNISHED**—A list of the names of all persons buried in any cemetery, or cremated in any crematory within the city limits, with the number of the permit and the date of burial, must be returned weekly to the borough office of the Department of Health in which the cemetery or crema-

tory is situated by the superintendent or other person in charge of such cemetery or crematory.

Regulation 10 PLACE OF ISSUANCE OF DISINTERMENT PERMITS.—Permits for the disinterment of bodies interred within the limits of the City of New York must be obtained at the office of the Department of Health in the borough in which the cemetery, at which disinterment is to take place, is situated. Such permit must be countersigned by the Sanitary Superintendent, an Assistant Sanitary Superintendent, the Registrar of Records, or an Assistant Registrar of Records.

Sec. 101 DISINFECTION AND RENOVATION OF PREMISES, FURNITURE, AND BELONGINGS—Adequate disinfection or cleansing and renovation of premises, furniture, and belongings, deemed by the Department of Health to be infected by any contagious, infectious or communicable disease, shall immediately follow the recovery, death, or removal of the person suffering from such disease, and such disinfection or cleansing and renovation shall be performed by the owner of said premises. (S. C. Sec. 146.)

Sec 102. DUTIES OF UNDERTAKERS.—It shall be the duty of every undertaker having notice of the death of any person within the City of New York of acute cerebro-spinal meningitis, acute poliomyelitis (infantile paralysis), Asiatic cholera, diphtheria (croup), plague, scarlet fever, smallpox, or typhus fever, or of the bringing of the dead body of any person who has died of any such disease into the said city, to give immediate notice thereof to the Department of Health. No person shall retain or expose, or assist in the retention or exposure of, the dead body of any such person except in a coffin or casket properly sealed; nor shall any person allow any such body to be placed in any coffin or casket unless the body shall have been wrapped in a sheet saturated with a proper disinfecting solution, and the coffin or casket shall then be immediately and permanently sealed. No undertaker shall assist in the public or church funeral of any such person. No undertaker shall use, or cause or allow to be used, at any funeral or in any room where the dead body of any such person shall be, any draperies, decorations, rugs, or carpets, belonging to or furnished by him or under his direction (S. C. Sec 141.)

Sec. 103 PUBLIC OR CHURCH FUNERALS PROHIBITED WHERE DEATH HAS BEEN CAUSED BY CERTAIN DISEASES—A public or church funeral shall not be held of any person who has died of acute poliomyelitis (infantile paralysis), Asiatic cholera, diphtheria (croup), epidemic cerebro-spinal meningitis, measles, plague, scarlet fever, smallpox, typhus fever, or yellow fever, but the funeral of such person shall be private, and it shall not be lawful to invite to, or permit at, the funeral of any person who has died of any one of the above diseases, or invite to, or permit at, any services connected therewith, any person whose attendance is not necessary, or from or to whom there is danger of contagion thereby.

NORTH CAROLINA

CLAIMS AGAINST ESTATES—Funeral bills have priority excepting as against lien claims

DEATH STATISTICS—State Board of Health supervises Law substantially accords with form adopted as a standard for comparison in the chapter on Death Statistics in Part I of this book. Violations punishable by \$5-\$50 for first offense, and by \$10-\$50 fine or no more than 30 days' imprisonment.

EMBALMERS' LICENSES.—State Board of Embalming consists of five appointees of State Board of Health, three of whom shall be members of latter board, and two shall be practical embalmers. Rotating five-year terms. Meetings at least once a year and as often as duties require.

Application by unlicensed person for license to be in writing and accompanied by \$5 fee. License issued if on examination Board finds that applicant is of good moral character, skilled in embalming and care of the dead, with responsible knowledge of sanitation and disinfection of bodies, apartments, etc. Licenses to be registered with local health board, if any, or with the clerk of the Superior Court, if there is no local board, and must be conspicuously displayed in place of business. Licenses renewable annually. Fee, \$2.

Violation of act punishable by \$50-\$100 fine.

BOARD RULES—Applicant must be at least 21 years old, have assisted in embalming at least ten bodies, have had at least one year of practical experience under licensed embalmer, pass examination upon cadaver if one can be provided, be endorsed by a licensed embalmer of at least two years' experience and by two registered physicians. Must pass written examination of not less than 50 questions upon following subjects: (a) Anatomy of the principal organs of the body, 10 questions; (b) The cavities of the human body, 5 questions, (c) Arterial and venous system, 10 questions;

(d) The blood and discolorations, 5 questions; (e) Disinfection and bacteria, 6 questions; (f) Arterial and cavity embalming, 10 questions; (g) Transportation rules. Must pass an oral examination of not less than 25 questions on the following subjects: (a) Embalming, 15 questions; (b) Contagious and infectious diseases, 4 questions; (c) Disinfection, 6 questions. Must attain at least a proficiency of 75 per cent on the entire examination.

INTEREST.—Legal rate, 6 per cent.

JURY SERVICE.—Funeral directors and embalmers exempted.

TIME LIMITS ON SUITS—Accounts, 3 years; notes, 3 years, if not under seal; notes under seal, 10 years.

TRANSPORTATION RULES.—See Section 11 in Part I of this book.

NORTH DAKOTA

CLAIMS AGAINST ESTATES.—Bills for last illness and funeral expense have priority over other claims

DEATH STATISTICS—State Board of Health supervises. The body of any person whose death occurs in the state shall not be interred, deposited in a vault or tomb, cremated or otherwise disposed of, or removed from or into any registration district, until a permit for burial or removal shall have been properly issued by the registrar of the registration district in which the death occurs, and no such burial or removal permit shall be issued by any registrar until a complete and satisfactory certificate and return of the death has been filed with him, as hereinafter provided; provided, that in case of any death outside of the state, where the body is accompanied by a removal or transit permit issued in accordance with the law and the health regulations in force when the death occurred, such removal or transit permit may be accepted as of the same authority as a permit from the local registrar

Other provisions of the law are substantially the same as those in Paragraphs 2-5, 7, 8 and 9 of the standard form of vital statistics law set forth in the chapter on Death Statistics in Part I of this book, which see.

DISPOSAL OF THE DEAD, OFFENSES, ETC—Statute gives right to one to direct the manner in which his body shall be disposed of after death. Subject to dissection authorized by law, body must be buried within a reasonable time after death, except as body is to be transported. Dissection of body not authorized by law, next of kin, etc., a misdemeanor. Statute fixes duty to bury in following order: 1. Husband of decedent. 2. Nearest of adult kin, in case of unmarried woman. 3. If no husband or next of kin, in such case, burial duty involves on coroner or poor authorities. If duty not performed within reasonable time by person primarily bound it devolves on next in order. If all neglect duty it devolves upon tenant or owner of premises where death occurred. Neglect of this duty is a misdemeanor, and renders one liable for treble amount of funeral expenses. Person bound to provide for burial is entitled to custody of the body. Detaining a body for debt is a misdemeanor.

DISTURBING FUNERALS.—"Every person who willfully disturbs, interrupts, or disquiets any assemblage of people met for the purpose of any funeral, or who, without authority of law, obstructs or detains any persons engaged in carrying or accompanying any dead body . . . to a place of burial, is guilty of a misdemeanor."

EMBALMERS' LICENSES.—State Board of Embalmers consists of the president and the secretary of the State Board of Health and three appointees of the Governor, the latter to be practical and practicing embalmers. Four-year terms. Members entitled to no salary, excepting secretary (\$50), but are entitled to actual expenses. Meetings at least once a year. Examinations to be conducted by Board or members thereof designated by it, covering "the subjects of embalming, and care, disposition and preservation of deceased persons, also on the subject of sanitation for the prevention and spread of infectious and contagious diseases, in accordance with the rules of the State Board of Health." Board shall also adopt rules for disinfection and cause them to be known to embalmers and funeral directors.

If satisfactory examination is passed and applicant shows that he is at least 21 years old, of good moral character, license issues. Licenses revocable for unfitness to practice, violation of rules, etc., on notice and hearing of charges. Licenses renewable annually by paying \$3 December 31. One in arrears more than two months not entitled to renewal license without re-examination. Practicing without license punishable by \$50-\$500 fine and/or imprisonment for not more than one year.

BOARD RULES—Any person wishing to qualify as a licensed embalmer shall apply to the State Board of Embalmers for a license. Such application shall contain the person's full name, age, place of residence, and certificates of two licensed physicians of good repute as to his general standing. The applicant shall furnish satisfactory

evidence of his having completed a four years' high school course, of his having attended a recognized school of embalming for a period of at least three months, and of his having had two years' experience under a licensed embalmer. The application must be accompanied by a fee of \$10. The applicant must pass such examination as shall be prepared by the Board, in visceral anatomy of the human body, physiology, bacteriology, chemistry, sanitary science, practical embalming, funeral conducting, state rules and regulations. Applicants for license through reciprocity with other states must have the same qualifications as are required by this board. Experienced candidates who have been licensed in other reciprocal states prior to March 10, 1921, shall meet the requirements in force in North Dakota at the time their licenses were granted. All applications for license through reciprocity with other states must be accompanied by a fee of \$25.

HEALTH REGULATIONS—Health officer to supervise funerals in all acute infectious disease cases. In funerals from houses under quarantine, members of immediate family may accompany body to cemetery or crematory and return to the house under supervision of health officer. A licensed embalmer shall prepare a body for burial dead from a disease requiring quarantine, as follows:

If the body be moved from the room in which death occurred to another room in the same house, to enable the embalmer to better carry out his duties, both rooms must be thoroughly scrubbed and woodwork, furniture, etc., mopped in addition to the general fumigation of the house.

The embalmer before entering a room containing a corpse dead from a disease requiring a quarantine, shall cover himself from head to foot in a cloth or rubber gown and shall cover his head with a snugly fitting cap, and whenever possible shall wear rubber gloves. Upon leaving the room the outer garments, cap and gloves shall all be wrapped in a tight covering or placed in a tightly closed bag, and the entire contents shall immediately thereafter be disinfected by boiling.

The coffin or casket shall not be taken into the room containing the corpse and removed therefrom unless the room previously or the room and coffin together, shall have undergone thorough disinfection under the direction of the health officer.

All knives, razors, trocars, needles, syringes, and all other instruments employed in the process of embalming, together with all vessels, sponges, cooling boards, or other apparatus taken from the room during the preparation of a corpse dead from a contagious or infectious disease, shall be thoroughly disinfected by boiling or immersion in a strong antiseptic solution immediately thereafter.

All fluids or other matter removed from such bodies during the embalming process shall be either burned or mixed with equal volumes of a disinfectant solution approved by the State Board of Health for at least three hours before final disposal.

In cases of death from disease other than those requiring quarantine, the same procedure as in deaths from quarantinable diseases shall be carried out in all cases dead from smallpox, measles, glanders, anthrax, Rocky Mountain tick fever, leprosy.

In cases of deaths from tuberculosis, typhoid fever, puerperal fever, erysipelas, or whooping cough, careful disinfection of the hands, instruments, and fluids and other matters removed from the body shall be carried out but not the other restrictions relative to the preparation of such bodies.

Any licensed embalmer in lieu of preparing the body for burial at the place of death may wrap it completely in a sheet soaked with a strong disinfectant, and place the body so wrapped in a wicker case and remove it to his place of business for embalming. But some precautions as above specified must be observed.

If funeral held at director's parlors in case of death from above enumerated diseases, except typhoid fever, tuberculosis, puerperal fever, erysipelas, or whooping cough, the local health officer shall supervise services and premises must be thoroughly disinfected afterwards.

No public or church funeral shall be held in cases of diphtheria, scarlet fever, smallpox, chickenpox, measles, whooping cough or any other dangerous epidemic or communicable diseases. Public or church funerals may be allowed in cases of tuberculosis, typhoid fever, erysipelas and other infectious diseases, if the body has been properly prepared and embalmed by a licensed embalmer.

All bodies must be buried to a depth of at least six feet.

MISCELLANEOUS REGULATIONS—The care and preparation of all bodies of persons dead from any cause shall be entirely private and no one shall be allowed in the embalming room, except the licensed embalmers and their assistants until the body is fully prepared and dressed, except by permission of the immediate family or the coroner.

All bodies to be shipped or transported must be embalmed regardless of the cause of death or the time in which the body shall reach its destination

INTEREST.—Legal rate, 6 per cent.

TIME LIMITS ON SUITS—Accounts, 6 years; notes, 6 years.

TRANSPORTATION RULES.—See Section 11 in Part I of this book.

OHIO

BURIAL BENEFIT INSURANCE.—No association engaged in providing for the payment of burial expenses, etc., shall contract to pay or pay such insurance, etc., to any "official undertaker or to any designated undertaker or undertaking concern or to any particular tradesman or business man," so as to deprive the representative or family of the decedent of freedom in purchasing supplies and services in the open market, unless expressly authorized by law.

CLAIMS AGAINST ESTATES.—Executor may pay funeral charges before letters testamentary are granted to him. Funeral bills, expenses of last illness, and expenses of administration have priority over other claims

DEATH STATISTICS.—"The body of a person whose death occurs in the state shall not be interred, deposited in a vault or tomb, cremated, or otherwise disposed of, or removed from or into a registration district, until a permit for burial, removal or other disposition shall have been properly issued by the local registrar of the registration district in which the death occurs. No such burial or removal permit shall be issued by any registrar until a complete and satisfactory certificate of death has been filed with him, as hereinafter provided.

"If a death occurs outside the state and the body is transported by common carrier into a registration district in the state for burial or other disposition, the transit and removal permit, issued in accordance with the law and health regulations of the place where the death occurred, shall be accepted by the local registrar of such district, and he shall issue thereon a local burial permit as if the death had occurred in such district. In such case, he shall plainly note upon the face of the burial permit that it was a body shipped in for interment, and the actual place of death

"A burial permit shall not be required from the local registrar of the district in which interment is to be made, when a body is removed from one district to another in the state, for purpose of burial or other disposition. No local registrar shall, as such, require from undertakers or persons acting as undertakers any fee for the privilege of burying dead bodies."

Death certificate substantially follows the standard form set forth in the chapter on Death Statistics in Part I of this book.

"The personal and statistical particulars (items one to thirteen of the preceding section) shall be signed by the informant, who may be any competent person acquainted with the facts. The statement of facts relating to the disposition of the body shall be signed by the undertaker, or person acting as such. The medical certificate shall be made and signed by the physician, if any, last in attendance on the deceased, who shall state the time in attendance, the time he last saw the deceased alive, and the hour of the day at which death occurred. He shall further state the cause of death, so as to show the course of disease or sequence of causes resulting in death, giving the primary cause, the contributory causes, if any, and the duration of each

"In case of death occurring without medical attendance, it shall be the duty of the undertaker to notify the registrar of such death, and, when so notified, the registrar shall inform the local health officer, and refer the case to him for immediate investigation and certification, prior to issuing the permit. When the local health officer is not a qualified physician, or when there is no such official, and in such cases only, the registrar shall make the certificate and return from the statement of relatives or other persons having adequate knowledge of the facts

"If it appears that the death was caused by unlawful or suspicious means, the registrar shall refer the case to the coroner. A coroner whose duty it is to hold an inquest on the body of a deceased person, and to make the certificate of death required for a burial permit, shall state therein the nature of the disease, or the manner of death, and if from external causes or violence, whether (probably) accidental, suicidal or homicidal. He shall, in either case, furnish the information required by the state registrar to properly classify the death

"Prior to any disposition of the body, the undertaker, or person acting as undertaker, shall obtain and file a certificate of death with the local registrar of the district in which the death occurred, and secure a burial or removal permit. He shall obtain the personal and statistical particulars required from the person best qualified to supply them and the signature thereto and address of his informant. He shall present the certificate to the attending physician, if any, or to the health officer or coroner, as di-

rected by the local registrar, for the medical certificate of the cause of death, and other particulars necessary to complete the record, as specified in the preceding two sections. He shall state the facts required relative to the date and place of burial, sign his name thereto with his address, and present the completed certificate to the local registrar, who shall then issue a permit for burial, removal, or other disposition of the body.

"The undertaker shall deliver the burial permit to the sexton, or other person in charge of the place of burial, before interring or otherwise disposing of the body; or shall attach the transit permit, containing the registrar's removal permit, to the box containing the corpse, when it is to be shipped by a transportation company, which permit shall accompany the corpse to its destination, and, if within the state of Ohio, it shall be delivered to the sexton or other person in charge of the place of burial.

"If the interment, or other disposition of the body, is to be made within the state, the burial permit may contain only a statement signed by the registrar that a satisfactory certificate of death has been filed with him, as required by law, and that permission is granted to inter, remove, or otherwise dispose of the deceased, and stating the name, age, sex, cause of death, and other necessary details upon the form prescribed by the state registrar.

"No sexton or person in charge of any premises in which interments are made shall inter, or permit the interment or other disposition of a body, unless it is accompanied by a burial, removal or transit permit, as herein provided. Each sexton, or person in charge of a burial ground, shall indorse upon the permit the date of interment and sign his name thereto. All permits so indorsed shall be returned to the local registrar of the district within ten days from the date of interment, or within the time fixed by the local board of health. He shall keep a record of all interments made in the premises under his charge, stating the name of the deceased person, place of death, date of burial, and name and address of the undertaker. Such record shall at all times be open to public inspection."

Whoever, being an undertaker, sexton, or person acting as undertaker, inter, removes, or otherwise disposes of the body of a deceased person without having received a burial or removal permit as provided by law, shall be fined not less than twenty dollars nor more than one hundred dollars.

Whoever, being a transportation company or common carrier transporting, carrying or accepting through its agents or employes for transportation or carriage, the body of a deceased person without an accompanying permit issued in accordance with law, shall be fined not less than fifty dollars nor more than two hundred dollars.

DETAINING CORPSE—Offense for superintendent of city hospital or other charitable institution, or for coroner, sheriff, etc., to wrongfully detain body.

EMBALMERS' LICENSES—State Board of Embalming Examiners consists of five members, including the President and the Secretary of the State Board of Health. The other three members are appointed by the Governor for rotating terms of three years each, and they must be resident and licensed embalmers of at least five years' consecutive experience in embalming, preparing and disposing of the dead. Appointed members removable for neglect of duty, incompetency or immoral conduct. Appointed members, excepting Secretary-Treasurer, to receive \$10 per day and reasonable and necessary traveling expenses while performing duties. Secretary-Treasurer's compensation fixed by Board.

Two or more examination meetings to be held each year, and at least 15 days' notice of same to be given. Examination covers: (a) Visceral anatomy and vascular system of human body. (b) Action and comparative value of germicides. (c) Methods of embalming and preparing bodies for transportation. (d) Meaning of "contagion," "infection," dangers they beget, and the best methods of restricting them, and bacteriology in relation to contagion and infection. (e) Signs of death and how determined. (f) Practical demonstration on cadaver.

An unlicensed person desiring to engage in the practice of embalming must apply in writing to the Board, giving such information as required by the regulations of the Board. Application for registration for examination must be accompanied by \$1 fee and certificates of three reputable citizens (one of whom shall be a licensed embalmer) that the applicant is of good moral character and stating his age and general education which shall be such as to entitle him or her to admittance to high school. Applicant must have completed to the approval of the Board, a course consisting of at least 26 weeks of studies in embalming, disinfection and sanitation in a recognized school of embalming, or have had at least two years of practical experience under a licensed embalmer in the state, during which time applicant must have embalmed at least 25 adult bodies. Application must state name, age, residence and the person or persons with whom employed, the name of the school attended, with a certificate by two reputable citizens that the applicant is of legal age and of good moral character, also a

certificate under oath, when required by the Board, from the President or Dean of the embalming school or college attended, that the applicant has complied with the requirements of such school or college, or a certificate under oath, when required by the Board, from the licensed embalmer under whom applicant has worked as apprentice, that applicant has complied with the apprenticeship requirements of the law. Application by registered applicant for examination must be accompanied by \$10 fee and the certificate of registration. Examination must be passed with an average grade of at least 75 per cent.

License must be registered with State Board of Health and conspicuously displayed in holder's office. Licenses renewable annually on or before January 1st by paying \$1 fee, or within six months thereafter on payment of \$10 fee. Renewal cards must be registered with State Board of Health. Provision was made for reinstating embalmers who served in the World War, on application within six months after discharge from military service, etc.

License may issue without examination to embalmer licensed in another state on payment of \$25 fee and showing that applicant passed an examination by the board of that state with a mark of at least 75 per cent on substantially the same requirements and subjects demanded in Ohio. Certificate from board of other state must be furnished.

Licenses may be revoked for fraud or misrepresentation in obtaining same, or if holder uses intoxicants or drugs to such extent as to render him unfit to practice, or if he has been convicted of a felony since obtaining license. Statute provides for statement of charges, notice of hearing, report of proceedings, appeal, etc.

Embalming, either by arterial or cavity treatment, or preparing body for burial, cremation or transportation, without license forbidden. Penalty, \$40-\$75 fine for first offense; for subsequent offense, \$50-\$100 fine and/or six months' imprisonment.

Licenses not transferable.

Act does not prevent funeral director or other person from conducting funeral or disposing of body after it has been prepared by a licensed embalmer.

HEALTH REGULATIONS—Bodies dead of smallpox, cholera, plague, yellow fever, typhus fever, diphtheria, membranous croup, scarlet fever, or other dangerous contagious or infectious disease, shall be buried or cremated within 24 hours after death, unless permit to do otherwise is given in writing by the Board of Health. No public or church funeral shall be held in connection with the burial and such body shall not be taken into any church, chapel or other public place. Only adult members of the family and such other persons as are actually necessary may be present at its burial or cremation.

INTEREST.—Legal rate, 6%.

MUNICIPAL LICENSES—Municipal corporations empowered to license undertakers and owners of hearses.

PRESERVATION ASSOCIATIONS—Any association organized to preserve and protect bodies before burial may purchase, or take by will or gift, hold, and convey real estate not exceeding one acre of land, and erect thereon suitable buildings, construct and maintain vaults, and such other appliances as are necessary to carry out its objects. Such property shall be exempt from taxation and from being appropriated to any other public purpose, if used exclusively for the purpose above described.

TIME LIMIT ON SUITS.—Accounts, 6 years; notes, 15 years.

OKLAHOMA

CLAIMS AGAINST ESTATE.—Funeral bills have priority over other claims.

DEATH STATISTICS—Rule 21. "Upon the death of any person within . . . a city, town or township, it shall be the duty of the undertaker or other person superintending the burial of said decedent to procure from the physician in attendance at the time of death, or of the coroner when the case comes under his jurisdiction, a certificate setting forth the full name, age, sex, color, place of death, date and cause of death, and such other facts as may be required by the regulations of the State Board of Health, the State Registrar and the Statutes of Oklahoma. If any person shall die without a physician in attendance, it shall be the duty of the undertaker or any person acquainted with the facts, to report the same to the health officer of the local Board of Health, who is hereby authorized to issue a certificate of death as aforesaid; provided, it be not a case requiring the attention of a coroner."

"No sexton or other person having charge or control, of any cemetery, burying place, tomb or vault, and no undertaker or other person shall enter, entomb, or place in any vault the dead body of any person, or remove such body from or out of any city, town or township, without having procured a certificate of death as provided in Rule 21 of this chapter, and it shall be the duty of any undertaker, or other person having charge

of the burial or removal of the dead body of any person, to deliver said certificate of death to the County or City Superintendent of Public Health on the 5th day of the month following the date of death."

EMBALMERS' LICENSES—State Board of Embalming consists of three appointees of Governor, serving rotating three-year terms. Each appointment, excepting to fill vacancy, to be made from four names furnished by Oklahoma Funeral Directors' Association, if such names be furnished by April 1. Members must be residents of state and have had at least five years' experience in the practice of embalming and in caring for the dead. Members removable for neglect of duty, incompetency, or improper conduct. Meetings to be held at least twice yearly. Members entitled to \$3 per day for actual time spent, not exceeding four days at any one examination. Board may adopt rules regulating practice of embalming, conduct of embalming schools, and may conduct or aid such schools, within the amount of funds in hands of treasurer.

Application for embalmer's license must be in writing and accompanied by \$5 fee, and appear before Board of examination. If Board finds "that the applicant is of good moral character, possessed of skill and knowledge of embalming, and the care and disposition of the dead, and has a reasonable knowledge of sanitation and the disinfection of bodies of deceased persons, and the apartments, clothing and bedding, in case of death from infectious or contagious diseases; the Board shall issue a license. License to be registered with local Board of Health and be conspicuously displayed in place of business. Members of State Board of Health residing nearest place of meeting are ex-officio members of examining Board. Applicant must pass by at least 75% grade. State Board of Health to approve examination questions. Licenses renewable on payment of \$3 fee. Practicing or holding self out as practicing, without license, punishable by \$50-\$100 fine.

HEALTH REGULATIONS—No one having charge of any building, room or place used for school or church purposes, or for public assembly, shall permit the body of any person dead from any of the contagious or infectious diseases named in these regulations, or any other dangerous contagious disease except typhoid fever and tuberculosis, to be taken into such building, room or place, for the purpose of holding funeral service; and no sexton, undertaker or other person having charge of or supervision over the burial of any body from any of the said diseases shall permit the coffin or casket containing such body to be opened; nor shall any child be permitted to act as pallbearer or carrier at any such funeral.

Public funerals over the remains of persons who have died of Asiatic cholera, bubonic plague, epidemic cerebro-spinal meningitis, diphtheria, measles, scarlet fever or smallpox, are hereby prohibited. Adult persons from the infected premises may, at the discretion of the local board of health, under prescribed restrictions, be permitted to attend the funeral of those dying upon the premises, provided they ride to and from the cemetery in a closed conveyance, and do not leave the same until returned to the quarantine. Conveyance so used shall be properly disinfected under personal supervision of Health Officer before being used again for any purpose. Funeral director violating this rule subject to have license revoked or suspended. Only licensed embalmer may prepare body or conduct funeral of one dead from infectious disease. No public funeral shall be held on premises where there is any disease above mentioned in this paragraph, nor where death has recently occurred therefrom.

INTEREST—Legal rate, 6%.

TIME LIMITS ON SUITS—Accounts, 3 years; notes, 5 years.

TRANSPORTATION RULES—Transportation companies forbidden to receive body for shipment without exhibition of death certificate. Violation of this provision by "any person having charge of interment" or by railroad agent, etc., punishable by \$25-\$100 fine and/or 30-90 days' imprisonment.

See also, Section 11 in Part I of this book.

OREGON

CLAIMS AGAINST ESTATES—Funeral bills rank first. The executor, or if there be none or if he fail to act, the widow, husband or next of kin, in the order named, is authorized to incur funeral charges, on account of the estate, for burial in a manner and at a cost according to decedent's circumstances and condition in life, but no funeral charges, except those necessary to give a plain and decent burial shall be allowed out of the estate where the assets are insufficient to satisfy all claims, including legacies and devises.

CORONER'S LAW—At the 1923 session of the Oregon Legislature the law relating to coroners was amended. The following is an abstract of provisions of the new act:

When informed that a person has been killed or dangerously wounded by another,

or has suddenly died, under circumstances creating reasonable suspicion that his death was caused by criminal means, or that such person has committed suicide, the coroner, at the discretion of the district attorney, shall order an autopsy or inquest, or both. Provision is made for subpoenaing witnesses, etc., for an inventory of property found on the body of deceased and delivery of the same to the county treasurer. Other provisions are as follows:

"For the purpose of preserving evidence until an inquest has been held . . . a coroner shall have authority to lock or close any room, house, dwelling, or inclosure, and may, at his discretion, appoint a custodian of such premises for a period of not to exceed five days."

Where the killing or wounding has occurred in the open, "the coroner may forbid the entrance of any person, except peace officers and district attorneys, into a specified, roped-off or defined area bearing any marks, imprints or other evidence." Trespass upon such area is punishable by a fine of not more than \$500 and/or not more than six months' imprisonment.

"No body of any person who has been killed shall be removed from the place where the death occurred without the permission of the coroner having been first obtained. No person shall remove any of the effects, personal property, instruments or weapons used in the killing, wounding or suicide of any other human being until permitted to do so by the coroner." Same penalty as for violating preceding section.

DEATH STATISTICS—State Board of Health supervises. Provisions of law closely follow standard form set forth in the chapter on Death Statistics in Part I of this book. (See specially Paragraphs 1-5, 7-9 of that form.) This proviso appears in the Oregon law: "That any licensed embalmer of this state may temporarily remove any such body of a person dying in this state from the place where death occurred outside the corporate limits of any city or town of 2,000 population or more to another registration district for the purpose of preparing the same for burial without having first obtained a removal permit, but in such case the embalmer shall, at the time of securing a burial, removal or transit permit for such body, file with the registrar from whom such permit is secured, upon a blank to be furnished by the state registrar, a certificate in writing of such temporary removal, signed by the embalmer."

EMBALMERS' BOARD FUNDS.—An act adopted by the Oregon Legislature at its 1923 session provides that revenues of the State Embalmers' Examining Board shall be paid into the State Treasury. Ten per cent becomes a part of the general fund of the state and the remainder is to be expended for the purpose of educating embalmers and securing evidence and prosecuting violations of the embalming act, provided, that \$3 of the \$5 annual license fee to be paid by each embalmer, except as provided in the act, shall be used by the board exclusively for educational purposes. The law further provides that "All necessary expenses incurred in giving examinations to applicants for embalmers' licenses and incidentals to the renewal of such licenses and all necessary expenses incurred in education and in enforcing the provisions of the law relating to embalming and relating to the burial and transportation of dead human bodies, shall be audited by the Secretary of State and paid from the funds herein provided in the same manner as other claims against the state are paid, after due approval thereof by the President and Secretary of said Oregon State Embalmers' Examining Board."

EMBALMERS' LICENSES—Unlicensed embalmer must register with State Embalmers' Examining Board, which consists of three members, one of whom is appointed biennially by Governor and who is to be a licensed embalmer. The second member is to be the Secretary of the Oregon Funeral Directors' Association, and the third the Secretary of the State Board of Health, who is Secretary of the Embalmers' Examining Board.

Preparation of the body of any deceased person for the purpose of preserving the same for more than forty-eight hours after death, or preparing the remains of any deceased person for shipment by railway or other public conveyance between points within the state of Oregon or between any points in the state of Oregon and any points without said state, or to come into the state of Oregon, shall be construed as practicing the occupation of embalming.

Applicant for license must pay examination fee of \$25 and be examined on anatomy, sanitary science, care, disinfection, preservation, transportation, and burial or other final disposition of the dead, and health rules relating to quarantine and communicable diseases. Rating required to be fixed by board.

Licenses renewable annually on or before December 31. Renewal fee, \$5. Licenses to be posted conspicuously in place of business.

Licenses must be at least 21 years old, of good moral character, with at least two years' experience under a licensed embalmer and at least a common school education, or

must be graduated from an approved embalming school. Recommendations showing necessary experience from at least three licensed embalmers must be furnished.

Licenses revocable for law violation, fraudulent misrepresentations, unprofessional or dishonorable conduct, violation of rules, etc., on notice and hearing of charges. Complainant must deposit amount of probable expense of hearing.

Holders of licenses in other states may be admitted if those states have similar requirements and recognize Oregon licenses. Fee, \$25.

Violations of act punishable by fine of not more than \$100 and/or imprisonment for not more than one year.

At the 1923 session of the Oregon legislature, the law of that state relating to the licensing of embalmers was amended by incorporating the following definition of "embalming": "Preparation of the body of any deceased person for the purpose of preserving the same from decay, or preparing the remains of any deceased person for shipment by railway or other public conveyance between points within the state of Oregon or between any points within the state of Oregon and any points without said state, or to come into the state of Oregon, shall be construed as practicing the occupation of embalming within the meaning of this chapter."

HEALTH AND TRANSPORTATION REGULATIONS.—No public or private funeral shall be held later than 24 hours after death unless body shall have been first embalmed by a licensed embalmer. This applies to all bodies to be cremated or otherwise disposed of.

Section 8. Transportation agents shall in no case receive a body unless accompanied by transit permit properly signed, and also transit label and certificate of embalmer stating that the body has been prepared for burial and shipment in accordance with the rules of the state embalmers' examining board. Nor will agents receive a dead human body even when accompanied by such transit permit if fluids are escaping from shipping case or it has become offensive in any degree.

Agents are instructed to refuse shipment unless embalmer's license card for the current year is presented and the signature and number on the card must correspond with that on the transit permit. The name and number of the embalmer must also be checked up in the official list of licensed embalmers as issued annually by the Oregon state embalmers' examining board.

For reference to additional local transportation regulations, see section 11 in Part I of this book.

INTEREST—Legal rate, 6 per cent.

TIME LIMITS ON SUITS.—Accounts, 6 years; notes, 6 years.

PENNSYLVANIA

CLAIMS AGAINST ESTATES.—Bills for funeral expenses have priority over other claims. On death of an employee leaving no wife, children, parents, sisters or brothers, the employer may pay wages over to the funeral director, not less than thirty days after death, in discharge of funeral bill.

CREMATION.—Permit must be obtained from health authorities before cremating or removing body for cremation.

DEATH STATISTICS.—State Department of Health supervises. Vital Statistics Law contains provisions substantially same as those set forth in the form of law adopted as a standard for comparison in the chapter on Death Statistics in Part I of this book, paragraphs 1-5, 7-9. Pennsylvania law omits clause in Paragraph 1, "or be temporarily held pending further disposition more than 72 hours after death."

EMBALMERS' AND FUNERAL DIRECTORS' LICENSES.—State Board of Undertakers consists of five practicing "undertakers" appointed by the Governor and holding office for rotating terms of three years each. Members receive no salary excepting the Secretary (\$500 per year), but are entitled to actual traveling expenses. Board must meet at least once each year and oftener as duties shall require.

Licenses must be registered at local Board of Health and must be conspicuously displayed in place of business. Licenses revocable by Board of Undertakers on proper cause and after full hearing.

One practicing or holding oneself out as practicing the business of undertaking, or the care, preparation, disposal and burial of bodies without a license is guilty of misdemeanor and subject to \$50-\$500 fine and/or not more than one year's imprisonment. The act does not "apply to bona fide employees of a duly licensed or registered undertaker, or to persons engaged simply as layers out or shrouders of the dead."

Applicants for examination and license must meet the following requirements: Must be 21 years of age or over, and able to read and write correctly. If between the age of 21 and 22 certificate from a recognized authority, giving the date of birth, must accom-

pany application Must be of good moral character. Must have a knowledge of hygiene and sanitation, as far as relates to the burial of the dead. Must have a thorough knowledge of the care and disposition of dead bodies, particularly in contagious diseases, and disinfecting of the rooms, clothing and bed clothing in contagious cases Must have a thorough knowledge of embalming, and a practical knowledge of the state, city, county, borough and township laws governing coroner's cases; also the rules of the state, city, county, borough and township board of health Must have been steadily engaged with an "undertaker or undertakers" for two years, having been called in as an extra hand or employee will not be considered as serving a practical experience for two years continuously. Must be vouched for by two "undertakers," who must make affidavit on page 3 of application. A fee of \$35.00 must be paid prior to examination Should applicant fail to pass examination \$10.00 will be retained The affidavits must be made by "undertakers" who have been licensed at least two years, and those vouching for the applicant must know that he has knowledge of sanitation and disinfection, such as pertains and refers to the preparation and burial of persons dead of contagious and infectious diseases An "undertaker" will be held responsible and may have his license revoked for false statements in his affidavit

Notice of the meetings of the board for examination will be given to the state and local funeral directors' associations, and in trade papers No application for examination will be accepted if not entirely and properly filled in, and under no circumstances shall there be any alterations or additions No application will be received later than 30 days before the examination The result of the examination will not be announced for at least 30 days after the date thereof

All remonstrances against applicants must be received by the board ten days previous to the meeting and be made in the form of affidavits Each member of a firm or a company must be licensed

INTEREST—Legal rate, 6 per cent

MORGUES—In counties where no public morgue is maintained, the coroner may remove bodies of unknown persons to some convenient private morgue Provision is made for compensating the owner of such private morgue in a sum to be fixed by the Salary Board Bodies received at morgues shall be embalmed or prepared for preservation as the coroner may deem necessary

PREPARATION, DISPOSAL, TRANSPORTATION, ETC., OF BODIES

DEPTH OF GRAVES—Except by special permission from the Department of Health, no interment of any human body shall be made . . . unless the distance from the top of the box . . . be at least five feet from the natural surface of the ground, except where solid rock or water may be encountered; then the distance . . . shall be not less than four feet; . . . and with the further exception that still-born children and children less than four years of age, dead of any disease other than anthrax, cholera, diphtheria, leprosy, smallpox, scarlet fever, tetanus, typhoid fever, typhus fever or yellow fever, shall be buried at such a depth that the top of the box containing the coffin or casket be not less than three and one-half feet from the natural surface of the ground

PERMANENT AND RECEIVING VAULTS—No human body shall be placed in any unsealed over-ground vault, catacomb or other receptacle above ground or in any under-ground vault, except such as are fitted with a stone covering to be tightly cemented after each interment, unless the coffin or casket containing the remains shall be first permanently and hermetically sealed in a metal case Provided, That receiving vaults may be used for the reception of bodies for not exceeding 30 days during October, November, December, January, February, March, April, and not exceeding a period of 72 hours during May, June, July, August and September, except by the special permission of the Department of Health

BURIAL PREPARATION—In the preparation for burial of the body of any person who has died of Asiatic cholera, glanders (farcy), bubonic plague, smallpox (variola, varioloid), yellow fever, typhus fever, scarlet fever (scarlatina, scarlet rash), relapsing fever, cerebrospinal meningitis (epidemic), (cerebrospinal fever, spotted fever), diphtheria (diphtheritic croup, membranous croup, putrid sore throat), tetanus, or leprosy, it shall be the duty of the undertaker, or person acting as such, to thoroughly disinfect and place such body within the coffin or casket in which it is to be buried within six hours after being first called upon to take charge of the same, if call is made between 5 a m and 11 p m, otherwise, such body shall be so placed in such coffin, or casket, within twelve hours, the coffin or casket then to be closed tightly, and not again opened unless permission be granted by the health authorities, for special and satisfactory cause shown. (Sec 17, Act of May 14, 1909)

INTERMENT.—The body of a person who has died of any of the diseases mentioned in section 17 of this act shall not remain unburied for a longer period . . .

than 36 hours after death, unless special permission be granted by the health authorities extending the time during which said body shall remain unburied, for special and satisfactory cause shown. The undertaker, or person acting as such, shall be responsible for any violation of the provisions of this section (Sec 18, act of May 14, 1909)

FUNERAL SERVICES All services held in connection with the funeral of the body of a person who has died of any of the diseases mentioned in Sec. 17 of this act, shall be private, and the attendance shall include only the immediate adult relatives of the deceased, who may not at the time be under absolute quarantine restrictions, and the necessary number of adult pall-bearers, and any advertisement of such funeral shall state the cause of death (Sec 19, act of May 14, 1909)

BODY NOT TO BE TAKEN INTO PUBLIC BUILDING—The body of a person, who has died of any of the diseases mentioned in Sec 17 of this act, shall in no instance be taken into any church, chapel, public hall, or public building, for the holding of funeral services. The undertaker, or person acting as such, and the sexton, janitor, or other person having control of such church, chapel, public hall, or public building, shall be responsible for any violation of the provisions of this section. (Sec. 20, act of May 14, 1909.)

Regulation of State Department of Health:

All services held in connection with the funeral of the body of any person who has died of measles, mumps, German measles, and whooping cough shall be private, and the attendance thereat shall include only the immediate adult relatives of the deceased who may at the time not be under absolute quarantine restrictions and the necessary number of adult pallbearers, and any advertisement of such funeral shall state the cause of death

The body of a person who has died of any such disease shall not be taken in any church, chapel, public hall, or public building for the purpose of holding funeral services.

(On August 6, 1919, the Department added chicken pox to the list of diseases enumerated above)

CONVEYANCES, ETC—No undertaker or person acting as such, at the funeral or burial of the body of a person who has died of any of the diseases mentioned in Sec. 17 of this act, shall furnish or provide . . . more than the necessary number of conveyances for such adult relatives as are mentioned in Sec. 19, . . . and pallbearers, and all such conveyances shall be fumigated and disinfected, at such time and in such manner as may be directed . . . by the health authorities (Sec. 21, act of May 14, 1909.)

(State Board of Health Regulation: No undertaker, or person or persons acting in the capacity of undertaker, or funeral director, or any other person shall rent or temporarily furnish for use at a funeral in any private house any carpet, rug, drapery, clothing, or artificial flowers)

The body of a person who has died of any of the diseases mentioned in Sec. 17 shall not be conveyed from any dwelling, or other building or place, to any cemetery or other point or place, except in a hearse, or other vehicle used for the purpose of conveying corpses only, or in such vehicles as shall be satisfactory to the health authorities, and under such regulations as they may in any case adopt. The undertaker, or person acting as such, having charge of the funeral or transportation of such body shall be responsible for any violation of the provisions of this section (Sec 22, act of May 14, 1909.)

PREPARATION OF BODIES DEAD OF CERTAIN DISEASES—The bodies of all persons dead of Asiatic cholera, anthrax, leprosy, relapsing fever, small-pox (variola or varioloid), yellow fever and plague, must, as soon as possible, after death, be completely enveloped in a sheet saturated with a mixture of chlorinated lime, in the proportion of one pound of lime to one gallon of water, a 20 per cent solution of pure (not the dark commercial) carbolic acid, a 1 to 500 solution of corrosive sublimate, or a 4 per cent solution of liquor formaldehyde, U S P, after which it shall be wrapped in a layer of raw cotton not less than one inch thick and be encased in a coffin or casket which must be *immediately closed* and not reopened for any purpose

BURIAL OF THE SAME.—Burial must take place within the limits of the registration district in which death occurred or in some district immediately adjacent thereto. The transportation of such bodies except by hearse or undertaker's wagon is positively forbidden

PREPARATION OF OTHER DISEASED BODIES.—The bodies of all persons dead of diphtheria or membranous croup, scarlet fever (scarlatina), and epidemic cerebrospinal meningitis or cerebrospinal fever, must immediately after death be enveloped in a sheet saturated with a mixture of chlorinated lime in the proportion of one pound of lime to one gallon of water, or a 20 per cent solution of pure (not the dark commercial) carbolic acid, or a 1 to 500 solution of corrosive sublimate, or a 4 per cent

solution of Liquor Formaldehydè U. S. P., and the body wrapped in a layer of raw cotton not less than one inch thick, and be placed in a coffin or casket which must be immediately closed and not reopened for any purpose. Provided, that the wrapping may be left off the face and the body placed in a coffin or casket fitted with a glass top. Provided also, that only the immediate members of the family be permitted to view the remains.

TRANSPORTATION RULES—Burial must take place within the limits of the registration district in which death occurred or in some district immediately adjacent thereto. The transportation of such bodies, except by hearse or undertaker's wagon, is positively forbidden, except that bodies dead of the diseases enumerated in this rule may be transported by a public conveyance or common carrier when prepared in the following manner:

The bodies shall be thoroughly disinfected by arterial and cavity injection with an approved disinfectant fluid, disinfecting and stopping all orifices with absorbent cotton and washing the body with the disinfectant solution, after which the body shall be completely wrapped in a sheet of raw cotton not less than one inch thick and be encased in a metal or metal lined coffin or casket and be hermetically sealed, or if any ordinary coffin or casket be used the outside case enclosing the same must be metal or metal lined and hermetically sealed.

The undertaker in charge will be responsible for the execution of this order and must present an affidavit as to the facts to the Local Registrar of the district in which death occurred on the official forms prepared for this purpose before receiving a transit permit.

The body of any person dead of a non-contagious disease shall not be removed from the registration district in which death occurred by public conveyance or common carrier except under the following conditions. First, when the remains have been thoroughly embalmed and disinfected, or when shipped to such point as can be reached within 24 hours after death, they shall be placed in a casket or coffin, and "it" shall be encased in a strong outer box made of good sound lumber not less than seven-eighths of an inch thick, all joints must be ploughed, grooved and glued, top and bottom put on with cleats and cross-pieces, all put together with screws, to be tightly closed with white lead, asphalt varnish or paraffine paint and a rubber band placed on the upper edge between the lid and the box, and strong handles must be placed on each end and side of said box. Second, when bodies are not embalmed or the destination cannot be reached within 24 hours after death the coffin, casket or outside case must be metal or metal lined and hermetically sealed.

The undertaker will be held responsible for the execution of these rules and must present an affidavit as to the facts to the Local Registrar of the district in which death occurred on the official forms prepared for this purpose before receiving a removal permit for said body.

TRANSFERS IN TRANSIT—When it may become necessary to transfer dead bodies in transit from one railway train to another, or from one railroad station to another, or from railroad station to ferry, the affidavit of undertaker and permit of the Local Registrar accompanying the remains from point of original shipment shall in all cases be sufficient authority for such transfer.

DISINTERMENTS—No dead body shall be removed from its place of original interment except under the following conditions:

PERMIT REQUIRED—No dead body shall be disinterred except a permit for the same be issued by the Local Registrar of the district in which the disinterment is to be made, the fee for such permit shall be fifty cents, to be paid to the Local Registrar by the person making the application, who shall present to the Local Registrar the correct name, date of death and cause of death for the body to be disinterred.

Disinterment permits shall be delivered to the sexton or other person in charge of burial grounds in which the disinterments are to be made and be by him returned to the Local Registrar on Saturday of each week.

All disinterments shall be void after the expiration of 72 hours from the date of issue and no disinterment shall be made between sunset and sunrise. No disinterment shall be made during June, July, August and September except by special permission of the Department of Health.

CERTAIN DISINTERMENTS FORBIDDEN—No disinterment of any body dead of small-pox, anthrax, Asiatic cholera, relapsing fever, yellow fever, epidemic cerebro-spinal meningitis or cerebrospinal fever, scarlet fever, diphtheria or membranous croup, shall be made within ten years from . . . the original burial . . . without the special permission of the Department of Health, and the graves

containing the bodies . . . shall not be opened for any purpose within ten years from the date of original burial without the special permission of the Department of Health.

The remains of any dead body shall not be exposed to view after disinterment without the special permission of the Department of Health.

TRANSPORTATION OF DISINTERRED BODIES—The transportation by public conveyance or common carrier of any disinterred body is positively forbidden except the coffin or casket containing the same be metal or metal lined and hermetically sealed or the outside case containing the same be metal lined and hermetically sealed.

FUNERAL DIRECTOR'S AFFIDAVIT—An affidavit of the facts must be presented by the "undertaker" in charge to the Local Registrar of the district in which the disinterment is made and from which the body is to be transported, who will issue a proper permit therefor, and no disinterred body shall be so transported without such a permit:

Provided, That in cities and boroughs disinterment permits for bodies interred within their corporate limits may be issued by the officials designated by the boards of health of such cities and boroughs, subject to the above rules and regulations, and the fees therefor may be regulated and disposed of by local ordinances.

PENALTIES—Violations of the act, or of orders or regulations of the Department of Health, are punishable by a maximum fine of \$100 and/or a maximum imprisonment of 30 days (Part of Sec 24, act of May 14, 1909)

TIME LIMITS ON SUITS—Accounts, 6 years; notes, 6 years

TOLL ROADS—Funeral processions exempt from payment of toll.

RHODE ISLAND

BARBERS' LAW, regulating right to follow occupation of barbering, exempts from its operation "undertakers" and persons engaged in preparing bodies for burial.

CLAIMS AGAINST ESTATES—Necessary funeral charges take precedence over other claims

CORONER LAW—"No embalming fluid, or any substitute therefor, shall be injected into the body of any person supposed to have come to death by violence, until a permit in writing, signed by a medical examiner, has been obtained."

DEATH STATISTICS—Death certificate shall state the date of death, name and surname of deceased, the sex, color, and condition, whether single or married, age, occupation, place of death, place of birth, names and birthplace of parents, disease or cause of death, the name and relation to the deceased of the person furnishing such information, place of burial and the time of recording, so far as can be ascertained. Still-births shall be recorded both as births and deaths, but separately from the records of both births or deaths

The "undertaker" or embalmer who has charge of the body shall obtain and return to the town clerk or registrar a certificate of death upon a blank to be furnished by the Secretary of the State Board of Health. The statement of facts relating to the disposition of the body shall be signed by the "undertaker" or person acting as such

Any registered embalmer shall be an "undertaker," and may act as such in any town or city in the state. And the superintendent of any state or town asylum, hospital or similar institution, or any cemetery corporation, may act as "undertaker," if he shall first register his name with the State Board of Registration in Embalming. No person shall act as "undertaker" or shall bury, deposit in a vault or tomb, cremate, or otherwise dispose of, or remove from any town or city in the state, the dead body of any person or of any still-born child, except he be a registered embalmer or "undertaker" registered as herein provided

No person shall bury, deposit in a vault or tomb, cremate or otherwise dispose of, or remove from any town or city in the state, the dead body of any person or of any still-born child, until a permit for burial or removal, or other disposition, shall have been properly issued by the town clerk or registrar of the town or city in which the death occurred. Special provision applies when a death occurs in a state institution. No burial or removal permit shall be issued until a certificate of death has been filed. When a dead body is transported into this state for burial, and death occurred outside of the state, the transit or removal permit issued where the death occurred shall be accepted by the sexton or person in charge at the place of burial as a burial permit

No sexton or person in charge of any premises in which interments, or entombments, or other disposition of dead bodies are made, shall inter or permit the interment, entombment, or other disposition of any such body unless it is accompanied by a burial permit to the place of interment, entombment or other disposition as herein provided

"Undertakers" and others making returns of deaths as required by sections seven

and nine of this chapter shall receive twenty-five cents for each return thus made, to be paid out of the town or city treasury of the town or city where the death occurred.

Every "undertaker," etc., who shall wilfully or unreasonably neglect or refuse to perform any of the duties imposed on or required of him by this chapter, shall be fined not exceeding \$20 nor less than \$2 for each offense, one-half thereof to the use of the town in which the offense shall occur and one-half thereof to the use of the person who shall complain of the same.

Every "undertaker," etc., shall cause his name, residence and postoffice address to be recorded in the town clerk's office of the town where he resides.

EMBALMERS' LICENSES.—Unlawful to embalm, or to hold oneself out as registered embalmer, unless registered. State Board of Registration in Embalming consists of three members who have had at least five years' practical experience on their own account in embalming in the state. Three-year terms. Each member may receive \$100 salary if receipts sufficient. Two regular meetings each year, with such additional meetings as may be called by the Board. Examination annually in Providence and other examinations may be held elsewhere. Examinations to cover "the theory and practice of embalming, and such other relevant subjects as said Board may determine. Annual registration fee, \$5. Applicant failing to appear at examination may appear at next meeting. Re-examination on failure to pass on payment of \$3. Renewal registration fee, \$3. Registration certificates revocable for "gross incompetency, for unprofessional conduct, or for other cause sufficient in the judgment of said Board," on notice and hearing of charges, subject to appeal to courts. Apprentices to register with Board. Violation of act punishable by fine of not more than \$100 and/or not more than two months' imprisonment.

BOARD REGULATIONS.—Applications for registration must be upon blank form issued by Board, filled out, signed and sworn to by the applicant, and signed by a reputable person, residing in same city or town as applicant, certifying that applicant is 21 years of age, of good moral character, and has obtained a common school education.

Applicant must have taken a regular course of instruction at a reputable school of embalming whose course is satisfactory to Board; or he must be a practicing embalmer, or he must hold a certificate of "a licensed embalmer" from another state whose examinations are satisfactory to Board; and must have had not less than one year's work as a practicing embalmer. All applications must be accompanied by a fee of \$5.

Seventy-five per cent of examination answers, in a scale of 100, shall be required to entitle the applicant to registration. Examinations for registration held at Providence, on the second Thursday of January and July of each year, and additional meetings may be held at such other time and place as the Board may determine.

Every registered embalmer shall renew certificate before the first of January of each year, the fee for which \$3 shall be paid not later than December 15th of the year designated upon the certificate which he holds. Upon receipt of said fee a renewal card bearing the name, number, and date of expiration of his registration will be issued. All registered embalmers must show card of renewal upon request of boards of health or persons authorized to issue permits.

Any person failing to renew registration shall appear before Board for re-examination, to entitle him or her to registration.

Board may refuse to issue or renew certificates to persons who have by false and fraudulent representation obtained or sought to obtain practice in their profession; or who fail to comply with laws, or who are guilty of other unprofessional or dishonorable conduct, or of any violation of the rules of the state or local boards of health. Board may revoke such certificates for any of such or other like causes on reasonable notice of the charge or charges against him, and an opportunity for a full hearing before Board.

Boards of health, city or town clerks, or other persons authorized to issue permits shall have a certified list of embalmers, compiled and furnished by the State Board of Registration in Embalming.

No transportation company operating in Rhode Island shall receive a body until it has been prepared by a registered embalmer.

INTEREST.—Legal rate, 6 per cent.

JURY SERVICE.—Licensed "undertakers" exempt.

OFFENSES AGAINST BODIES.—Officer seizing body under color of legal process subject to fine of not more than \$500 or imprisonment not exceeding six months.

TIME LIMITS ON SUITS.—Accounts, 6 years, notes, 6 years.

TRANSPORTATION RULES.—See Section 11 in Part I of this book.

SOUTH CAROLINA

CLAIMS AGAINST ESTATES.—Funeral expenses and other expenses of last sickness, administration expenses have priority over other claims. Funeral expense claim has priority over judgment obtained in lifetime of decedent. (58 S. C. 117; 36 S. E. 533.) Administrator or executor bound to furnish decent funeral and one who provides reasonable funeral expenses under proper circumstances is entitled to reimbursement through claim against the estate. (76 S. C. 7; 54 S. E. 801.)

CORONER LAW—"It shall be unlawful to embalm a dead human body when any fact within the knowledge, or brought to the attention of the embalmer is sufficient to arouse suspicion of crime in connection with the cause of death of the deceased, until the permission of the Coroner or of a magistrate, if a coroner be not accessible, shall have first been obtained. Any person violating the provisions of this section shall be deemed guilty of a misdemeanor, and upon conviction thereof, shall be fined not less than \$50 nor more than \$100."

DEATH STATISTICS.—That the body of any person whose death occurs in the state shall not be interred, deposited in a vault or tomb, cremated or otherwise disposed of, or removed from or into any registration district or be held pending further disposition more than 72 hours after death, until a permit for burial, removal or other disposition thereof shall have been properly issued by the local registrar, sub-registrar (or his deputy) of the registration district in which the death occurred. Provided, that in sparsely settled districts, or when it is impracticable to file a death certificate and obtain a burial or removal permit, a body may be buried or removed from such district without a permit, but a certificate of death shall be filed with the registrar within ten days. No such burial or removal permit shall be issued by any registrar until a complete and satisfactory certificate of death has been filed with him as hereinafter provided, except as above set forth; that when a dead body is brought into the state for burial, the transit permit which accompanies such body shall be filed with the local registrar of the district where burial or other disposition of which body takes place; and the registrar shall note date and place of burial on such permit, and forward same to the state registrar. No fee shall be required for the issue of burial or removal permits in this state.

Other provisions of the law conform substantially to Paragraphs 2-5, 7, 8 of the form set forth as a standard for comparison in the chapter on Death Statistics in Part I of this book.

EMBALMERS' LICENSES—State Board of Embalmers consists of five appointees of the Governor, including the President and the Secretary of the State Board of Health and three members of the South Carolina Funeral Directors' and Embalmers' Association. The three members serve rotating terms of three years each. If the Association fails to nominate three names for each appointment the Governor may appoint any suitable person. The three members must reside in the state and must have had at least five years' experience in embalming and in the care and disposition of bodies. Members removable for incapacity, misconduct or neglect of duty. Board must meet at least once a year and oftener if efficient discharge of duties so require, and may make rules. Members entitled to \$5 for each day actually employed and five cents for each mile traveled while so engaged.

Every person desiring to engage in the practice of embalming shall make written application to the Board for a license, accompanied with a license fee of \$10, and present himself or herself before the Board at a time and place fixed by the Board, and if the Board shall find, upon examination, that the applicant is of good moral character, possessed of skill and knowledge of embalming, anatomy and the care and disposition of the dead and has a reasonable knowledge of sanitation and the disinfection of bodies of deceased persons, and the apartment, clothing and bedding in cases of death from infectious and contagious diseases, and has attended a school of embalming of recognized standards and merits as determined by the Board, and taken a six months' course therein and served with an embalmer holding a license from the duly constituted authorities of any state for three months, or has served six months under such embalmer and taken a three months' course in such school, the Board shall issue to the applicant a license. All persons receiving a license shall register the fact at the office of the Board of Health of the city, and where there is no Board of Health, with the Clerk of the Town, and, where there is no Clerk of the Town, with the nearest magistrate, where it is proposed to carry on said practice, and shall display said license in a conspicuous place in the office of such licentiate: Provided, That the Board may issue license without such examination to persons licensed by any state wherein persons licensed by the State Board of Embalming of the State of South Carolina are permitted to practice embalming by virtue of such license and without the examination otherwise required by law; and Provided, That all licenses issued by the State Board

of Embalming of this state shall terminate on the 30th day of June of each year, but may be renewed on the day following by making payment of \$1 to said Board therefor. Practicing without license punishable by \$5-\$100 fine.

INTEREST.—Legal rate, 7 per cent.

TIME LIMITS ON SUITS.—Accounts, 6 years; notes, 6 years.

TRANSPORTATION RULES.—Statute provides that the transportation of bodies dead of dangerous, contagious or infectious disease is absolutely forbidden, into, through, or out of the state, or any city or town, except on compliance with State Board of Health rules, which rules are to be approved by the Governor.

For reference to additional local regulations, see Section 11 in Part I of this book.

VIOLATION OF RULES OF BOARD OF HEALTH.—Fine of not more than \$100 or 30 days' imprisonment.

SOUTH DAKOTA

BURIAL, TRANSPORTATION, AND EMBALMING FLUID REGULATIONS—Board of Health rules:

Regulation 215 The remains of the dead must be prepared for burial or shipment by a licensed embalmer.

Regulation 216. Railroads forbidden to receive body unless prepared by licensed embalmer.

Regulation 217. In arterial embalming of bodies to be shipped not less than eight parts by weight of fluid to 150 pounds of body weight shall be used. In addition, in any case of contagious, infectious or communicable disease, the body should be washed and all orifices plugged with an absorbent material saturated with formaldehyde solution, and not less than eight parts by weight of embalming fluid to one hundred and fifty parts of body weight shall be equally distributed by injection, one-half in the thorax and one-half in the abdominal cavity. In case of cancer, all exposed surfaces shall be firmly bandaged with a dressing of absorbent material saturated with the same embalming fluid. Eroded surfaces and discharging sinuses shall be bandaged and dressed as directed for cancer.

Regulation 218. All embalming fluids sold or used in South Dakota must contain formaldehyde gas in the proportion of five per cent by weight of the gas in every hundred parts by volume of the fluid, and must not contain any ingredients that interfere with the germicidal action of the formaldehyde.

Such embalming fluids must not contain chloral, nor shall they contain arsenic, mercury, zinc or other mineral poisons.

Regulation 219. A list of ingredients in every embalming fluid sold or used in South Dakota must be on file in the office of the State Board of Health.

Regulation 220. Only licensed embalmers shall be permitted to take charge of the remains of one who has died of smallpox, scarlet fever, diphtheria, or other dangerous communicable disease. Such remains must be properly disinfected and inclosed in a tightly sealed coffin which shall not thereafter be opened. The funeral of such person shall be strictly private, and in the removal of the remains for burial or other purposes only such vehicle shall be employed as is authorized by the local health officer.

Regulation 221. No dead body must remain unburied longer than four days, unless embalmed by a licensed embalmer. When death is due to any of the diseases specified in Regulation 220, the body must not remain unburied for more than twenty-four hours unless prepared for shipment as provided for under the transportation regulations, in which event must begin within this time.

Regulation 222. All shipping permits must be signed by a licensed embalmer. A firm name must not be used in signing such permits unless all members of the firm are licensed embalmers.

For additional local transportation regulations see the chapter on Transportation Regulations in Part I of this book.

CLAIMS AGAINST ESTATES.—“The executor or administrator, as soon as he has sufficient funds in his hands, must pay the funeral expenses, the expenses of last sickness, and the allowance made to the family of the decedent.”

DEATH STATISTICS.—Law gives supervision to State Board of Health, which makes rules. Burial and transportation permits required. Violation a misdemeanor. Board regulations are substantially same as paragraphs 1-3, 5-9, of the standard form of vital statistics law to be found in the chapter on Death Statistics in Part I of this book.

DISPOSAL OF BODIES, ETC ; OFFENSES.—The statute enables one to direct the manner in which his body shall be disposed of after death. Subject to authorized

dissection or preparation for transportation, every body must be decently buried within a reasonable time. Unauthorized dissection is a misdemeanor. Duty to bury devolves in the following order: (1) Husband or wife; (2) if decedent was unmarried, duty rests on adult next of kin if able to defray expenses; (3) if decedent left no husband, wife or kin, duty rests upon coroner or poor authorities. If person primarily bound neglects duty for more than reasonable time, it devolves upon next person specified. If all neglect, it devolves upon the tenant or owner of premises where death occurred. Neglect of this duty is a misdemeanor and one performing the duty in the neglectful person's stead may recover treble the expenses incurred in making burial. The person bound to bury is entitled to custody of the body for that purpose except as against a coroner holding inquest. Misdemeanor to detain body for debt, or to disturb a funeral or detain persons carrying or accompanying a body to place of burial.

EMBALMERS' LICENSES—State Board of Embalmers consists of the President and Secretary of the State Board of Health, and three practical and practicing embalmers, one of whom shall be a resident of the Black Hills section, each to hold for the term of three years, or until their successors are appointed and qualified. All appointments made by the Governor from nominations of six or more qualified candidates to be filed by the South Dakota Funeral Directors' Association. The members receive no salary, except the Secretary, who shall receive \$50 per year, but actual traveling and necessary expenses of the members shall be paid out of its receipts.

Such board shall meet at least once a year, and may also hold special meetings as frequently as the proper and efficient discharge of its duties shall require, at a time and place to be fixed by the rules and regulations of the Board, and the rules and regulations of the board shall provide for the giving of timely notice of all meetings to every member of the Board and to all applicants for license.

The Board, or such number thereof as it may designate, shall examine candidates for licenses on the subject of embalming and the care, disposition and preservation of deceased persons, also on the subject of sanitation for the prevention of the spread of infectious and contagious diseases, in accordance with the rules of the State Board of Health; at least once each year an examination shall be held in the Black Hills, if applicants there residing shall request it, such Board shall adopt such rules and regulations for the disinfection of dead bodies, their bedding, clothes and surroundings as it shall think proper, and shall cause such rules to be made known to every person engaged in the profession of embalming and the business of undertaker, it being intended that this Board shall be an aid to the State Board of Health.

Every person who desires to practice the profession of embalming bodies dead of any infectious or contagious disease, or prepare for shipment any such body, shall appear before the Board or a member thereof designated, for examination as to his knowledge of embalming, sanitation, preservation of the dead, disinfection of a deceased person and the apartments, bedding, clothing, excreta and anything likely to be affected in case of death from infectious or contagious disease, in accordance with the rules and regulations of the State Board of Health, such examination shall be in writing and all examination papers shall be kept on record by such State Board of Embalmers, and if the applicant be of good moral character and passes a satisfactory examination, such Board shall issue to such applicant, on payment of \$5, a license to practice embalming for one year. If the applicant desires a renewal of such license, such Board shall grant it except for cause, and the annual fee for renewal of license shall not exceed the sum of \$3.

Violation of law punishable by \$50-\$500 fine and/or not more than one year's imprisonment.

BOARD OF HEALTH REGULATION.—Regulation 214. Funeral director or embalmer desiring to qualify as competent to prepare a body for burial or transportation shall apply to the State Board of Health for a license, stating the name of the applicant in full, age and place of residence, and be endorsed by a licensed embalmer and two registered physicians of good repute as to the applicant's general standing. The examination shall consist of (a) A written examination of not less than fifty questions upon Anatomy of the principal organs of the body, 10 questions; the cavities of the human body, 5 questions; arterial and venous system, 10 questions; the blood and discolorations, 5 questions; arterial and cavity embalming, 10 questions, bacteria and disinfection, 6 questions; transportation rules, 4 questions. The applicants must attain a proficiency of 75 per cent on the entire examination.

INTEREST—Legal rate, 7 per cent.

TIME LIMITS ON SUITS.—Accounts, 6 years, notes, 6 years.

TENNESSEE

CLAIMS AGAINST ESTATES.—Funeral bills have priority over other debts of an estate subject to expenses of administration. It has been decided by the local courts that a suit of burial clothes worth \$53 was a proper charge against an estate where there was no proof of extravagance considering the condition of the estate. In the same case (2 Tenn Chancery Reports, 369) it was decided that an administrator properly may be charged with reasonable funeral expenses, incurred prior to his appointment, by a friend of decedent. In another case, it was decided that personal representative of an insolvent estate was entitled to reimbursement out of the proceeds of real estate on account of funeral expenses as against debts not constituting liens against the estate.

CORPORATIONS may be formed "to carry on the business and trade of merchants, including that of undertakers and funeral directors"

DEATH STATISTICS—Law substantially accords with provisions set forth as standard in the chapter on Death Statistics in Part I of this book

DISINTERMENTS—Unlawful to disinter body dead of yellow fever within fifteen months after death or when temperature is above freezing

EMBALMERS' CHARGES—An act passed in 1909 provides "that said Board of Embalmers shall establish a price of not more than, and no persons engaged in embalming shall make a charge of more than, \$15 for embalming a body in any incorporated town or city in this state, and not more than \$20 for embalming any body outside of any incorporated town or city, and that no larger fees than herein set out shall be collectible either in law or equity" But a rule of the Board, as revised in 1921, provides. "The price to be charged by embalmers for services rendered in the embalming of bodies be left as a matter to be arranged by contract between the embalmer and the person for whom said services are rendered"

NOTE.—It may well be that the act referred to is generally treated as an unconstitutional attempt to limit the power to contract for payment of such compensation as may be mutually satisfactory

EMBALMERS' LICENSES—State Board of Embalmers consists of a member of the State Board of Health and four practical and practicing embalmers, one of which four is to be selected from the western part of the state, one from the eastern and two from the middle. Appointments by Governor for rotating four-year terms. Members must be residents of state and four of them must have had five years' practice as embalmers. Removable for neglect of duty, incompetency, or improper conduct. Members receive \$5 per day for actual service and railroad fare. Board fixes salary of Secretary.

Examinations to be held at least once a year, and oftener if duties require. Thirty days' notice to be given. Board shall examine all applicants for license to practice embalming, and determine whether or not such applicants possess the necessary qualifications to properly embalm dead human bodies; and if, upon such examination, said Board shall determine that such applicant is properly qualified to embalm dead human bodies, it shall grant a license to such person to embalm dead bodies.

License to be registered with local Board of Health and displayed in place of business, and is revocable by the Board for violation of the embalming act, or rules, subject to review by the courts

Violations of act punishable by \$25-\$50 fine and imprisonment at discretion of court.

Licenses renewable annually on payment of \$2 fee

Licenses issued in other states to be recognized if requirements of such states equivalent to those of Tennessee

BOARD RULES.—Application for license to be made on blanks furnished by Board, showing name, age, color, residence, place of business, etc., and to be accompanied by \$10 fee. They must show that they are persons of good moral character, and that they have practiced embalming for at least three years, or that they have had at least three years of practical instruction in embalming and disinfecting under a licensed embalmer, or two years' such instruction and hold a diploma from a reputable embalming school, and must attain a proficiency of at least 75 per cent on examination. Examinations held the first Wednesday in January, April, July and October. Applicant failing to pass may receive return of fee or stand another examination within two years

Applicant must have assisted in embalming at least 25 bodies and may be licensed without apprenticeship if he holds a diploma from an embalming school of a year's course of 26 weeks (solid time) under the proper precautionary conditions. He must pass a practical examination upon a cadaver if one can be provided, and shall be endorsed by a licensed embalmer of at least three years' experience and by two registered physicians. He must pass a written examination of not less than 50 questions on fol-

lowing subjects: Anatomy, 20 questions, cavities, 5; arterial and venous system, 10; blood and discoloration, 5; arterial and cavity embalming, 10; disinfection and sanitation, 6; transportation rules, 4. Also an oral examination of not less than 25 questions on: Embalming, 15; contagious and infectious diseases, 4; disinfection, 6.

Licenses expire May 30, and must be renewed within previous 30 days. No right to practice pending renewal. Lapsed licenses renewable within three years on payment of back fees

Unlicensed persons not to practice embalming unless under personal supervision of licensed embalmer present during entire operation

"Embalming" is defined according to the definition appearing in Part I of this book in the chapter on Embalmers' Licenses.

Licenses revocable for lack of good moral character, malpractice, gross or willful professional neglect, violation of law or rules, withholding from Board knowledge of another practicing without license, etc

INTEREST—Legal rate, 6 per cent

TIME LIMITS ON SUITS—Accounts, 6 years; notes, 6 years.

TRANSPORTATION RULES.—See Section 11 in Part I of this book.

TEXAS

CLAIMS AGAINST ESTATES—Funeral bills take priority over other claims. Presentment within sixty days after letters of administration or letters testamentary issue required in order to give priority over exemption and widow's allowance rights

CORPORATIONS may be formed "for conducting the business of undertaker and embalmer."

DEATH STATISTICS.—"Every person acting as undertaker shall file with the proper registrar a certificate of death and all persons furnishing a coffin or box in which to bury the dead shall be deemed undertakers." Death certificate required is substantially same as standard form set forth in the chapter on Death Statistics in Part I of this book.

Requirement for permits for burial, removal and transportation of bodies is made substantially same as provided in Paragraph 1 of the standard Vital Statistics Law set forth in the above-mentioned chapter of this book, excepting that the Texas provision does not apply to counties of less than 2,000 population.

"In case of death (including still-births) in which any undertaker buries the dead or assists at such burial, it shall be the duty of such undertaker to accurately and properly fill out the death certificate as provided by the State Registrar, in so far as regards the 'personal and statistical particulars,' and further, he shall obtain from the physician or coroner the answers to questions under the heading of 'medical particulars' of the death certificate; said death certificate to be mailed or handed in by the undertaker to the county registrar within five days after said death occurs; provided, that in case the undertaker cannot communicate with the physician or coroner within the five days specified, he shall mail the death certificate to such physician or coroner as accurately and properly filled out as possible, for such physician or coroner to complete the 'medical particulars' of the death certificate, in which event the aforesaid physician or coroner shall make report to the proper registrar."

"Undertaker" must report to State Registrar physician, coroner, superintendent or person in charge of hospital, on neglect or refusal to make proper certificate.

EMBALMERS' LICENSES—State Board of Embalming consists of five appointees of the State Health Officer, serving rotating two-year terms. They must be "practical embalmers having experience in said business and the care of the disposition of dead human bodies," and citizens of the state. They are removable "for neglect of duty, incompetency or improper conduct."

The Board is empowered to prescribe a standard of efficiency as to those engaged in the practice of embalming, to meet at least once a year and oftener as proper discharge of duties require. Fifteen days' notice of meetings must be published in at least three daily newspapers published in different towns and cities.

One desiring to engage in the practice of embalming must apply in writing to the Board and pay a \$10 license fee. "If the Board shall find upon examination that the applicant is of good moral character, possessed of the knowledge of the venous-arterial system, the location of the heart, lungs, bladder, womb, and other organs of the human body and the location of abdominal, pleural and thoracic cavities, location of the carotid, brachial, radial, ulnar, femoral and tibial arteries, a knowledge of the science of embalming and the care and disposition of the dead, and has a reasonable knowledge of sanitation and the disinfection of bodies of diseased persons and the apartment, clothing

and bedding, in case of death by infectious or contagious diseases, the Board shall issue to said applicant a license as a duly licensed embalmer."

License must be registered with the county clerk and conspicuously displayed in place of business.

Licenses are renewable on payment of \$5 fee, and are revocable "for good and sufficient cause, subject to the right of appeal to the state health officer, whose decision shall be final"

Members of Board are entitled to a per diem of \$5 and expenses.

Practice by unlicensed embalmers prohibited. Fine, \$50-\$100.

BOARD RULES.—Two examinations a year. Applications to be made on forms provided by Secretary of Board, showing name, age, residence, time actively engaged in undertaking business as proprietor or employee, and practical instruction had in embalming. Applications must be in hands of Secretary thirty days before examination meeting. Applicant must be at least 21 years old and have embalmed or assisted in embalming at least 25 bodies, must be of good moral character and be recommended by a licensed embalmer of Texas, must have had two years' practical experience in embalming under licensed embalmer, or eighteen months of such experience and six weeks' course in a recognized school of embalming, or one year's experience and a ten weeks' course, or a twenty-six weeks' course without such experience "No certificate of a correspondence school will be accepted" Applicant failing to appear at examination may appear at next on giving good excuse, but not entitled to further consideration on failing to appear at next examination.

Applicant must pass a written examination on:

Anatomy of the principal organs of the body, the cavities of the human body, arterial and venous system, blood and discoloration, bacteriology, chemistry of embalming, disinfecting and disinfectants, transportation laws and rules, and arterial and cavity embalming; and an oral examination on embalming special cases, contagious and infectious diseases, shipment of dead bodies; and a practical examination upon a cadaver. The applicant shall receive an average grade of at least 75 per cent each in written, oral and practical demonstration before a license shall be granted.

Licenses expire May 31. May be renewed within six months, and afterwards on a showing of practice in meantime in another jurisdiction and payment of renewal fees back to expiration of old license. In other cases re-examination necessary. No right to practice pending renewal of license. One other than licensed embalmer may not practice embalming in any of its branches unless licensed embalmer be present, directing entire operation. "Embalming" is given the standard definition appearing in the chapter in Part I of this book on Embalmers' Licenses

Licenses revocable for lack of good moral character, gross or willful malpractice, violation of laws or rules governing disposition of dead bodies, false certificates, etc.

Duplicate licenses obtainable for \$2

INTEREST—Legal rate, 6 per cent.

JURY SERVICE.—"Undertakers" exempt.

OFFICIAL LECTURES.—State Board of Embalming required to provide for holding at time and place of annual meeting of Texas Funeral Directors' and Embalmers' Association "a course of lectures on the latest and improved methods of embalming," and every Texas licensed embalmer is required to attend at least once in three years. Notice to be mailed to each licensed embalmer 30 days before meeting. Licenses may be revoked for nonattendance and re-examination required as condition to reinstatement of license. Excuse for nonattendance must be in form of affidavit mailed to Secretary at least ten days before meeting. In case of sickness, doctor's certificate required, showing nature of illness. Nonresidents not required to attend, if licensed in their own state. Embalmers attending meeting must register, or be counted absent. Certificate issued to those attending. Presidents and secretaries of Board and of Association constitute board for selection of lecturers.

TIME LIMITS ON SUITS—Accounts, 2 years; notes, 4 years.

TOLL ROADS free to persons going to and from funerals

TRANSPORTATION RULES.—See Section 11 in Part I of this book.

UTAH

CLAIMS AGAINST ESTATES—Executor or administrator must pay funeral expenses as soon as he has sufficient funds. Executor may pay before qualifying

DEATH STATISTICS.—Vital Statistics Law embodies provisions essentially the same as those set forth in paragraphs 1-5, 7-9, of the standard form of law mentioned in the chapter on Death Statistics, which see.

EMBALMERS' LICENSES.—Embalmers and embalmers' apprentices must register with the State Department of Registration. "Either the embalming of dead human

bodies or the preparation for transportation of human bodies dead of a contagious or infectious disease constitutes the practice of embalming." To receive a certificate as registered embalmer one must be at least 21 years old, of good moral character and temperate habits, a graduate from the eighth grade of a common school approved by the Department, or who has completed an equivalent course of study, as determined by examination, a graduate of a school of embalming approved by the Department and requiring a six months' course. He must have studied embalming in Utah under a registered embalmer for at least one year as a registered apprentice. But time spent in embalming study under a licensed embalmer in another state may be credited. Applicant must also pass an examination. One may be registered as an apprentice if at least eighteen years old, of good moral character and of temperate habits, and a graduate from the eighth grade of an approved common school or who has completed an equivalent course of study as shown by an examination. Applications made on blanks furnished by Department. The Department shall hold examinations of applicants for registration as embalmers at such times and places as it may determine. The examination may include both practical demonstrations and written and oral tests, and shall embrace the subjects of anatomy, sanitary science, and the care, preservation, embalming, transportation, and burial of dead human bodies. The Department may, by rule, prescribe additional subjects for examination.

Certificates must be displayed in place of business, and are renewable on or before January 1 and expire February 1, if not renewed during January. Embalmer retiring from practice for not more than five years may renew by paying all lapse renewal fees, except that if he has practiced in another jurisdiction in the meantime he may renew his certificate by paying a \$10 fee. Certificates denied or revoked for conviction of felony, fraudulent misrepresentations in applying for certificate, or in practicing, etc.; practicing with knowledge of having an infectious or contagious disease; habitual drunkenness or use of drugs; or second violation of laws pertaining to duties. At least 20 days' notice of charges must be given and a public hearing had.

One licensed in another jurisdiction may be licensed without examination if at least 21 years old and if the requirements for licensing in such other jurisdiction were substantially equivalent to those in force in Utah.

Violations of act punishable by \$25-\$200 fine.

INTEREST—Legal rate, 8 per cent.

TIME LIMITS ON SUITS—Accounts, 4 years; notes, 6 years.

TRANSPORTATION RULES—"The State Board of Health shall make all needful rules and regulations for the transportation of dead bodies, and such rules and regulations shall, so far as shall be deemed practical, be in conformity with similar rules and regulations now in force in other North American states and provinces."

For reference to additional local regulations, see Section 11 in Part I of this book.

VERMONT

CLAIMS AGAINST ESTATES—Necessary funeral expense bills have priority over other claims. A new law provides that "Whenever a person dies while under guardianship, the guardian may pay so much of the burial expenses as he is able from the funds in his hands, and make final settlement with the probate court."

CORONER LAW—A person shall not embalm and introduce any fluid into a body of a person who has died under suspicious circumstances or where a criminal cause of death is suspected, until after a legal investigation has determined the facts; but it shall be the duty of an embalmer forthwith to report any such case to the local health officer, or a majority of the board of selectmen, and obtain permission to embalm the body. No person shall embalm or introduce any fluid into a human dead body unless he is a registered or licensed embalmer or performs such act by the direction of an embalmer.

DEATH STATISTICS AND TRANSPORTATION REGULATIONS—A dead body of a human being shall not be buried, entombed or removed from a town, or otherwise disposed of, without a certificate of permission issued and signed as herein-after provided, by the health officer or deputy health officer and, in case of their absence, by the town clerk. The physician who is last in attendance upon a deceased person during his last illness, shall immediately fill out a certificate of death which shall contain all the facts indicated in the form prescribed in the following section. Death certificate is substantially in same form as standard form set forth in the chapter on Death Statistics in Part I of this book. When a person dies without medical attendance, the head of the household where the death occurs, or the next of kin shall immediately notify the health officer, if there is one, otherwise a member of the local board of health where such death occurred, who shall, after proper investigation, and, if deemed

necessary by him, after an autopsy to determine the cause of death, issue a certificate of death

If the certificate of death issued under this chapter states that the cause of death was smallpox, varioloid, Asiatic cholera, typhus fever, scarlet fever, scarlatina, diphtheria, or bubonic plague, such certificate must be filed with the health officer, if there is one, otherwise with some member of the local board of health. Whenever a dead body is brought into this state for burial or entombment accompanied by a removal permit issued under the laws of the state from which such body is brought, such permit shall be received as sufficient authority for burial; but if not accompanied by such permit, the person in charge thereof shall apply to the health officer or clerk of the town in which such body is to be buried for a burial permit, and said officer or clerk shall issue such permit when furnished with such information as is required by the law of this state as to the identity and cause of death of a person dying in this state. If it is desired to bury, entomb or otherwise dispose of a dead body within the limits of a town where the death occurred, the certificate of permission shall state plainly the time, place and manner of such burial, entombment or disposition; and, if it is desired to remove a dead body from the town where the death occurred, the certificate of permission shall contain the essential facts contained in the certificate of death on which it is issued, and shall accompany the body to its destination, and may be accepted as a permit for burial or entombment by a sexton or other person having the care of a cemetery, burial ground, tomb or receiving vault. A person who buries, entombs, transports or removes the dead body of a human being without a certificate of permission so to do, or in any other manner or at any other time or place than as specified in such certificate, shall be imprisoned not more than one year or fined not more than \$500 nor less than \$10, or both.

A person desirous of disinterring or removing a body from one cemetery to another cemetery or to another part of the same cemetery or from a tomb or receiving vault elsewhere, shall first obtain a written permit from the health officer, if there is one, otherwise from the board of health of the town where such dead body is interred or entombed. Such permit shall state specifically where such body is to be buried or entombed and the time and manner of its removal. A health officer or other person issuing such a permit shall make it in duplicate, one copy of which shall be delivered to the person having charge of the cemetery or tomb whence the body is to be taken and the other shall be delivered to the person having charge of the cemetery or tomb where it is desired to place the body.

A sexton or other person having the care of a cemetery, tomb or receiving vault shall not receive or permit the burial or entombment of a dead body, or the remains thereof, in the cemetery or tomb of which he has charge, or the removal of a body therefrom, until there is delivered to him a certificate of permission issued in accordance with these provisions.

Vermont Public Acts, 1923, p 74, provides that "The town clerk of each town shall receive all certificates of deaths occurring within his own town, and shall issue burial permits and receive fees therefor as provided by sections 3801, 3808, 3811, 3812, 3813, 3814, 3819 and 3820 of the general laws; provided that burial permits in cases of deaths from communicable diseases shall not be issued by a town clerk except in accordance with instructions issued by the local health officer or the state board of health and to be kept on file by the town clerk."

For reference to additional local regulations, see chapter on Transportation Regulations in Part I of this book.

DISPOSAL OF BODIES OF POOR—As amended in 1923, General Laws, sec 6097, now provides that "An overseer of the poor of a town or a superintendent of a public institution may procure the services of a licensed embalmer or undertaker who shall care for the body of a person who dies within such town or public institution, and whose body is subject to burial at public expense, until the friends, relatives or overseer have determined its final disposition and for such services, fees not to exceed \$15 shall be chargeable to the persons making final disposition of the body. When requested in writing by a practicing physician, resident of this state, such overseer or superintendent shall deliver such body to him to be used by him for the advancement of anatomical science. Such a body shall not be delivered, if the deceased, during his last sickness, made request for the burial of his body, nor if a person claiming to be akin to the deceased and satisfying such overseer or superintendent thereof, shall, within 48 hours after such person's decease, require such body to be buried, nor if the deceased was a stranger or traveler who died suddenly and before making himself known nor if he had served in the army or navy of the United States."

EMBALMERS' LICENSES—State Board of Examiners of Embalmers consists of three members appointed by the Governor and serving rotating terms of six years each,

one being a practicing physician and two being practical embalmers of at least five years' experience. Members removable for neglect of duty, incompetency or misconduct. Examinations shall be held at least once a year if there are applicants, and oftener if efficient discharge of duties require.

Applicant for a license to engage in the business of embalming shall file his application 60 days prior to the examination, with a \$10 examination fee. The application shall show the name, residence, and proposed place of business, and state the times and places where he has been engaged or employed as an embalmer, or as an assistant, and shall be accompanied by an affidavit of two reputable embalmers that the applicant is more than 21 years old, is of good moral character, and that, unless actually engaged in the business as registered embalmer, he has served as assistant for at least two years prior to the date of his application.

Examinations in writing, relating to embalming and undertaking, sanitation, preservation of bodies, disinfection requirements in case of infectious and contagious diseases, etc. Such oral examination as may be deemed necessary may be conducted. If applicant passes and is found to be of good moral character he may be licensed on payment of \$10 license fee.

Licenses revocable for cause, after notice and hearing.

Licenses must be renewed annually on or before Dec. 31 by paying to the secretary of the board of embalmers a fee of \$2. Secretary must notify all registered embalmers on or before Dec. 15, by mail, that their licenses expire Dec. 31. If license is not renewed as required before April 1, which it may be on payment of a \$4 fee, the license is forfeited, but may be reinstated on payment of a \$10 fee. Registered embalmer must exhibit receipt for license fee if requested by board of health or person authorized to issue burial or removal permits. The secretary of the board of embalmers shall furnish annually to all city and town clerks a certified list of all licensed embalmers. Licenses must be registered with the clerk of the town or city in which business is conducted.

Unlicensed person practicing embalming subject to \$50-\$100 fine. This law does not prevent employment by registered embalmer of unlicensed assistants in his presence and under his direction, except in cases of infectious and contagious diseases, which cases shall be cared for only by a licensed embalmer, or under the immediate personal direction of the Health Officer.

INTEREST.—Legal rate, 6 per cent.

TIME LIMITS ON SUITS.—Accounts, 6 years; notes, 6 years (14 years if witnessed).

VIRGINIA

CLAIMS AGAINST ESTATES—Funeral bills and administration expenses have priority over other claims.

CORONER LAW—Unlawful to embalm body when facts arouse suspicion of crime causing death, unless permitted by coroner, or justice of peace if there be no coroner. Violation punishable by \$25-\$100 fine.

DEATH STATISTICS—State Board of Health supervises. Law contains provisions substantially the same as those contained in paragraphs 1-5, 7, 8, of the standard form of vital statistics law, as set forth in the chapter in Part I of this book on Death Statistics. It is provided that in sparsely settled districts, or when it is impracticable to file a death certificate and obtain a burial or removal permit, a body may be buried or removed without it, but a death certificate must be filed within ten days, and such sparsely settled districts are to be designated by the secretary of the county board of health. Burial or removal without permit punishable by \$1-\$10 fine; other violations by \$5-\$100 fine.

Any dealer, carpenter, or other person who shall sell a coffin for the burial of a dead person, shall deliver to the purchaser a certificate of death filled out as completely as possible, and instruct the purchaser, that after supplying any omitted information either statistical or medical, to deliver the certificate to the local registrar of the district in which the death occurred, and obtain from him a burial or transit permit before interment, removal, or other disposition of the body is made.

If for good reason the doctor's or coroner's certificate of death, or that of the person acting as coroner, cannot be obtained, the purchaser or person acting as undertaker shall file with the local registrar a provisional certificate of death upon which the registrar shall issue a burial or transit permit on condition that a completed certificate of death will be filed within ten days with the registrar of the district in which the death occurred.

Each dealer, carpenter, or other person selling coffins shall furnish the State Regis-

trar at the end of each month, a list of sales for the month, of coffins in cases in which death certificates have not been filed with the local registrar.

EMBALMERS' LICENSES—State Board of Embalming consists of five members serving rotating five-year terms and appointed by the Governor. Except to fill vacancy, appointment must be made from three names presented by Virginia Funeral Directors' Association, if nominations be made by June 15. Members must be residents and have had at least five years' practice in embalming and in the care and disposition of the dead. Removable for neglect of duty, incompetency, or improper conduct. One member is to be appointed to State Board of Health by the Governor.

Meetings to be held at least twice a year, and oftener if proper discharge of duties so require. Board empowered to make rules regulating the practice of embalming

One desiring to practice embalming must apply in writing to the board and pay a \$5 license fee, and appear before the board, at a time and place to be fixed. If the board finds on examination "that the applicant is of good moral character, possessed of skill and knowledge of said science of embalming, and the care and disposition of the dead, and has a reasonable knowledge of sanitation and the disinfection of bodies of deceased persons, and of the apartment, clothing and bedding in case of death from infectious diseases," a license shall issue. License to be registered with the local Board of Health, or if none, with the Clerk of the Circuit Court, and to be conspicuously displayed in place of business.

Licenses renewable annually on payment of \$2 fee, unless rules or laws have been violated. Refusal of renewal reviewable in Corporation Court of city or Circuit Court of county. Board may suspend license for gross incompetency, dishonesty, or any act derogatory to the standing of the profession; but the party affected shall have the right of appeal to the Corporation Court of the city, or Circuit Court of the county, as the case may be, in which he resides. The board may recognize licenses issued in other states to practice embalming, under such requirements and regulations as may be prescribed by the board.

Unlicensed person practicing, or pretending to practice, embalming, by arterial or cavity treatment subject to \$50-\$100 fine.

INTEREST.—Legal rate, 6 per cent.

JURY SERVICE—Licensed undertakers exempted

TIME LIMITS ON SUITS—Accounts, 3 years; notes, not under seal, 5 years; notes under seal, 10 years.

TRANSPORTATION RULES—See section 11 in Part I of this book

WASHINGTON

BURIAL REQUIREMENTS, ETC.—Bodies required to be buried or cremated within a reasonable time, except as dissection may be authorized by law as will or by next of kin, etc., to ascertain cause of death

CLAIMS AGAINST ESTATES—Funeral bills in such amount as court may order have priority over other claims.

DEATH STATISTICS—State Board of Health Supervises. Provisions are made substantially same as contained in Paragraphs 1-9 of the standard form of Vital Statistics Law as set forth in the chapter in Part I of this book on Death Statistics, which see.

EMBALMERS' LICENSES—Issued by State Department of Licenses. Examinations by committee. Applications to be made on forms furnished by department. Practice of embalming by unlicensed persons forbidden. Preparation of body to preserve same for more than 30 hours after death, or preparing remains for shipment by railway or other public conveyance between points within the state or between any points in the state and points without the state, shall be construed as practicing embalming within the meaning of this act. Examinations at least once each year, of which ten days' notice is to be given applicants. Examination fee, \$5. Examination covers: Anatomy, sanitary science, the care, disinfection, preservation, transportation and burial or other final disposition of the remains of deceased persons, and the rules and regulations of the State Board of Health relating to quarantine and communicable diseases. Applicant shall also demonstrate his proficiency as an embalmer by operations on cadaver. The average rating required to pass shall be fixed by the board prior to the examination, and the board having been satisfied that he has the requisite qualifications to practice the occupation of embalmer, a certificate of registration shall be issued authorizing him to practice said occupation until December 31 of that year. Upon the issuance of certificate applicant shall pay a further fee of \$5.00. Applications for renewal of

licenses must be filed with the secretary of the said board on or before December 31 of each year, and shall be accompanied by a renewal fee of \$1.00

Applicant shall have attained the age of 21 years and have had not less than two years' experience under a licensed embalmer in this state, or in lieu thereof shall have had a practical experience of not less than one year under a licensed embalmer and shall have completed a regular course of instruction in a recognized school of embalming. Application to be accompanied by certificate of good moral character, signed by three responsible citizens, one of whom shall be a licensed embalmer who has known applicant at least one year.

Department may revoke license if the holder has been guilty of drunkenness or has been convicted of crime or who has obtained license by false or fraudulent representation, or who has been guilty of immoral or unprofessional or dishonorable conduct, or of wilful or repeated violation of rules or regulations or of doing work in an insanitary or filthy manner: Provided, That before license shall be revoked the holder shall have notice in writing of the charges against him and shall, not less than ten days after the service thereof, be given a public hearing and full opportunity to produce testimony in his behalf and to confront the witnesses against him. Any person whose certificate has been so revoked may, after the expiration of 90 days upon application have the same re-issued upon satisfactory showing that disqualification has ceased.

Any licensed embalmer who shall prefer charges against any other licensed embalmer shall deposit a sum sufficient to cover the probable expense in hearing such charges and in case the charge be substantiated in whole or in part, such deposit shall be returned to the complainant; but if such charge be not substantiated in whole or in part the board shall retain a sum sufficient to reimburse it for the expense incurred, and return the balance.

The department shall recognize licenses issued to embalmers under laws of any other state board having similar requirements. Provided, That if such state recognizes licenses issued by this state, licenses issued by such other states may be deemed sufficient evidence of qualifications of the holder thereof without further examination, and the holder of such license shall be entitled to have a license issued to him upon the payment of the sum of \$10.00. License and renewals to be registered in the office of the local board of health

Any person who violates any of the provisions of this act, or any of the rules or regulations prescribed by authority of this act, shall be punished by a fine of not less than \$10.00 nor more than \$100.00, or be imprisoned in the county jail not less than ten days nor more than ninety days, or both.

INTEREST—Legal rate, 6 per cent.

OFFENSES AGAINST DEAD.—A misdemeanor to detain a body for debt or to obstruct one carrying or accompanying the same to place of burial or cremation.

TIME LIMITS OF SUITS—Accounts, 3 years, notes, 6 years.

TRANSPORTATION RULES.—See section 11 in Part I of this book.

WEST VIRGINIA

CLAIMS AGAINST ESTATES—Executor may provide for decedent's burial and pay funeral expenses before qualifying. Funeral expenses and administration expenses have priority over other charges against estate.

DEATH STATISTICS—Law of 1921 contains provisions substantially same as those set forth in Paragraphs 1-5, 7, 8, of the form of Vital Statistics law set forth as a standard for comparison in the chapter on Death Certificates in Part I of this book.

EMBALMERS' LICENSES.—State Board of Embalmers consists of one of the most competent embalmers from each congressional district of the state, who shall have resided in the state at least five years and have had practical experience for at least five years. Membership divided into three classes holding for rotating terms of three years each. Appointments by the Governor. Members entitled to a per diem of \$3 for each day's attendance at meetings, and Secretary entitled to \$100 annual salary. Annual meeting on the third Tuesday of September, and special meetings may be called as duties require.

Unlicensed person desiring to engage in embalming must have had at least one year's practical experience under a competent licensed embalmer, and apply to the Board for examination. He must show that he is of good moral character, possessed of skill and knowledge of sanitation, preservation of dead, disinfecting bodies, apartments, etc., and pay a \$25 fee. One who has been licensed in another state on passing successful examination may be licensed without examination on payment of \$25 fee and showing that he is of good moral character. License may be issued on due examination to an employee of an undertaking firm or corporation, for use and benefit of the

firm or company Licenses renewable annually on or before the third Tuesday of September each year License holder moving from one county to another in the state may have his certificate transferred to that county. Renewal or transfer fee, \$1 Licenses revocable for cause after full hearing. Licenses recorded by Clerk of County Court, at instance of Secretary of Board but at expense of license holder License to be conspicuously displayed in place of business.

Embalming without being licensed is punishable by \$25-\$500 fine and/or not more than one year's imprisonment. Funeral directors not practicing embalming need not be licensed under act

EMBALMERS' OBLIGATION TO SERVE.—An embalmer must, when so required, disinfect and embalm bodies, no matter how infectious or contagious the character of the disease that caused the death, and shall not charge unreasonable rates for such services. Violation of this provision subjects offender to \$50-\$100 fine and/or 10-30 days' imprisonment

INTEREST—Legal rate, 6 per cent

MISCELLANEOUS PROVISIONS.—Persons exempt from arrest under civil process while going to and from funerals, and also exempt from turnpike tolls.

TIME LIMITS ON SUITS—Accounts, 5 years, notes, 10 years

TRANSPORTATION RULES—See Section 11 in Part I of this book

WISCONSIN

CLAIMS AGAINST ESTATES—Necessary funeral expenses and expense of last illness have priority over other demands and may be paid in advance of debts in general

DEATH STATISTICS—State Bureau of Vital Statistics supervises, under direction of State Board of Health. Undertaker required to register with local registrar who will furnish blanks, copy of law, etc Still-births registerable as both deaths and births. On death occurring in state, body not to be interred, deposited in vault or tomb, cremated or otherwise disposed of, or removed from registration district, until burial or removal permit issued by local registrar, and no such permit shall issue until proper death certificate has been filed Death certificate is in standard form set forth in the chapter on Death Statistics in Part I of this book Statement of facts in death certificate, relating to disposal of body, shall be signed by the undertaker or person acting as such, who is also responsible for obtaining and filing the death certificate and securing burial or removal permit before disposing of body. He shall obtain the personal and statistical particulars required from the person best qualified to supply them over the signature and address of informant. He shall then present the certificate to the attending physician or other person authorized by law to fill out the medical certificate of the cause of death and other particulars necessary to complete the record He shall then state the facts required relative to the date and place of burial over his signature and with his address, and present the completed certificate to the registrar, who shall then issue a burial or removal permit The undertaker shall deliver the burial permit to the sexton or person in charge of the place of burial before interring the body, or attach the removal permit to the box containing the corpse, when shipped by any transportation company, to accompany same to destination

The death certificate need not be filed and a burial permit obtained before the body is embalmed, but in all cases before the body is interred, deposited in a vault or tomb, cremated, shipped or otherwise disposed of, the death certificate must be filed with some local registrar and a burial permit obtained

EMBALMERS' LICENSES—State Board of Health empowered to determine qualifications necessary to properly embalm bodies and disinfect premises The Board, or some member thereof, shall examine all applicants and issue license to all who successfully pass such examination. No person shall embalm any dead human body unless holding a valid license It shall be unlawful for one not licensed to advertise, practice, or pretend to practice, embalming by either arterial or cavity treatment

Examinations to be held at least once a year at such times and places as the Board may designate No license granted excepting to those who have at least two years' practical instruction in embalming and disinfecting under a licensed embalmer Applications to be on blanks furnished by Board and accompanied by \$5 fee and proof that applicant is at least 21 years old, of good moral character, and had a general education equivalent to that required for graduation from eighth grade of any public school

Licenses renewable annually on application made in December with \$1 fee or in January on payment of \$2 fee. List of license holders to be furnished every January to all licensed embalmers and transportation companies Secretary of Board must give notice by mail to known undertakers not licensed as embalmers of examination meet-

ings and give similar notice of the facts that licenses are about to expire or have expired.

Penalty for practicing without license, \$10-\$50 fine or 10-60 days' imprisonment.

BOARD RULES—Application for examination must contain full name of applicant, his age, place of residence, name of embalming school or schools he has attended, length of practical instruction in embalming and disinfecting, the name or names and addresses of the licensed embalmer or embalmers under whom the applicant received such practical instruction, number of bodies applicant has assisted in embalming, and affidavit of the licensed embalmer or embalmers under whose supervision the candidate has worked as to his ability and qualifications as an embalmer and his moral character. All applications for examination must be sworn to.

2 Any person holding an embalmer's license in full force and duly issued by some other state desiring to practice embalming in Wisconsin, shall make a written application to the Board of Health for a license, accompanying the same with the license fee agreed upon between the State of Wisconsin and the state where the applicant is then licensed, together with a duly certified statement from such other state showing that such applicant is the holder of a duly issued license in full force and effect and was duly examined by such state authority. The Board may, in its discretion, issue to such applicant a license, provided that the standard of requirements in the state where the said license was issued is as high as the requirements in Wisconsin.

3 Where a special examination for licensing embalmers is granted the license so issued shall only be valid until next regular examination and the results of such examination are determined. No temporary permit to practice embalming, pending examination.

4. Any applicant who fails at any regular scheduled examination may take the next regular examination without the payment of an additional license fee. If applicant fails on second examination a new fee must be paid before taking additional examinations.

5 But one regular examination for the licensing of embalmers will be held each year, such examination to be held at the time and place determined by the State Board of Health.

6. The State Board of Health shall select from a list of nine names, to be submitted by the executive committee of the State Funeral Directors' and Embalmers' Association of Wisconsin, a committee of three examiners to be known as the "committee of examiners" for the examining of embalmers as to their qualifications and fitness to be entitled to a license, and in case of a vacancy such vacancy shall be filled from a list of three names to be submitted by the executive committee of the State Funeral Directors' and Embalmers' Association.

The committee of examiners shall, under the supervision of the State Board of Health, conduct all examinations, submit to the Board as soon as possible after each examination the standing of each candidate for a license in both oral and written work, together with its recommendations as to whether or not a license shall be granted. This rule may be waived in the case of special examinations, provided for under Rule 3.

Each member of the committee of examiners entitled to \$10 per day and expenses for each day actually in attendance upon the meetings of the committee.

7. All applicants must pass a written and oral examination on the following subjects: anatomy, arterial and venous systems, chemicals employed by embalmers—their action and proper uses, hygiene, sanitation and disinfection, communicable diseases, arterial and cavity embalming, bacteria and the transportation rules, and such other subjects pertaining to embalming and sanitation as may be required.

8 All candidates must obtain an average of at least 75 per cent.

9. Any applicant for a license who shall have been employed for at least two years under a licensed embalmer and shall have had at least two years of practical instructions in embalming and disinfecting under a licensed embalmer or embalmers in all cases of embalming incident to said undertaker's ordinary business shall be considered to have had the practical experience in embalming and disinfecting required by the state law, provided the applicant has assisted in embalming at least fifty (50) bodies.

INTEREST—Legal rate, 6 per cent.

MISCELLANEOUS REGULATIONS—"Whenever request therefor is made, the presence of a female shall be permitted in cases where a dead female body is prepared for burial."

Attendance at funerals in cases of death from influenza, or pneumonia following influenza, shall be limited to members of immediate family and others assisting in the burial rites.

No public or church funeral shall be held in connection with the burial of a person who has died of Asiatic cholera (cholera), bubonic plague, smallpox, yellow fever,

typhus fever, diphtheria (membranous croup), scarlet fever (scarlatina), measles, epidemic cerebrospinal meningitis, or acute anterior poliomyelitis, nor shall the bodies of persons dead of any such diseases be taken into any church, chapel, or other public place.

The bodies of persons who have died of Asiatic cholera (cholera), yellow fever, smallpox, typhus fever, bubonic plague, diphtheria (membranous croup), scarlet fever (scarlatina), epidemic cerebrospinal meningitis, or acute anterior poliomyelitis, if not embalmed, shall be wrapped in a sheet saturated with a solution of bichloride of mercury (one ounce to a gallon of water) or some other efficacious disinfectant, and shall be buried or incinerated within 36 hours after death. The removal of bodies for burial or incineration from place of death of those who have died of Asiatic cholera (cholera), yellow fever, smallpox or bubonic plague shall take place between the hours of 9 p. m. and 5 a. m.

In the preparation of bodies for burial or transportation the following precautions shall be taken by the embalmer, when death has resulted from any of the following diseases, to-wit: Smallpox, typhus fever, diphtheria, scarlet fever, and measles:

Except where the room containing the body has been previously disinfected by the health authorities, the embalmer before entering such room shall don outer garments of rubber, or cloth, completely covering the body, and a cap to cover the hair. Upon leaving the room these shall be removed and placed in a bag, wrapped in a sheet or other covering, all of which shall be disinfected by formaldehyde fumigation, or boiling in water, as soon thereafter as possible. He shall also, before leaving the house, thoroughly disinfect his hands, giving special attention to the finger nails.

All knives, trocars, needles, syringes, and other instruments and all vessels, sponges, gloves, cooling boards, or other things used in embalming or preparation of such dead bodies, or taken into the room by the embalmer, shall be properly disinfected immediately after being used.

All fluids or other matters removed from such bodies in the process of embalming shall be mixed with an equal quantity of a 5 per cent solution of either formalin or carbolic acid before being finally disposed of.

No embalming fluid or any substitute therefor shall be injected into the body of any person dead from violence or suspected violence unless the cause of death is clearly shown, until a death certificate properly filled out has been filed and a burial permit obtained.

Illegal for any licensed embalmer to sign any death certificate, burial permit or transportation permit for another "undertaker" unless he or she has actually supervised or done the work of embalming.

Metal or metal-lined caskets or outside cases shall not be required for the local interment of a body dead of any dangerous communicable disease.

TIME LIMITS ON SUITS—Accounts, 6 years, notes, 6 years

TRANSPORTATION RULES—See Section 11 in Part I of this book

UNAUTHORIZED DISINTERMENT punishable by not more than three years' imprisonment or a fine of not more than \$500

WYOMING

CLAIMS AGAINST ESTATES.—The executor or administrator, as soon as he has sufficient funds in his hands, must pay the funeral expenses and the expenses of last illness.

DEATH STATISTICS.—Death certificates must be made in standard form (see chapter on Death Statistics in Part I of this book). Law provides that the "undertaker" or person acting as such, shall be solely responsible for filing certificate, properly made out in ink, and obtaining burial or removal permit before disposing of body. He must obtain physician's certificate. In case of death from violence, suddenly or under suspicious circumstances, or in the absence of medical attendance, certificate shall be referred to Health Officer or Coroner, for statement of cause of death. "Undertaker" must deliver burial or removal permit to sexton, agent of transportation company, or other person receiving the body from him for final disposition or removal. Violation of act subjects offender to \$10-\$100 fine and/or not more than 90 days' imprisonment.

EMBALMERS' LICENSES—State Board of Embalming consists of three appointees of the Governor, removable by him for neglect of duty, etc. Secretary of State Board of Health is President of the Board, and other two members must be licensed embalmers, with rotating terms of office of three years each. Annual meetings.

Applications for licenses must be accompanied by \$15 fee. Applicant must show that he is of good moral character and has skill and knowledge in embalming, care of the dead, disinfection, etc., and pass with a grade of at least 75 per cent. Licenses renew-

able on payment of \$2 fee. Practicing or holding oneself out as an embalmer without a license is a misdemeanor.

BOARD REGULATIONS.—Examinations to be held the second Wednesday in January and July. Applications to be made on forms furnished by Board, and accompanied by recommendations by a physician and two reputable business or professional men who have known applicant for at least one year. Applicant must be at least 21 years old and must be "actually engaged in business as proprietor or employee." Two years' experience in assisting in embalming and preparing bodies required, except that certificate showing completion of a course in a reputable school of embalming approved by the Board will be accepted in lieu of one year's experience. Applicant must have embalmed at least twenty-five bodies under the supervision of a licensed embalmer, and must have completed a course of schooling equal to ninth grade. Examination covers such questions as Board may put concerning visceral anatomy, action and comparative value of germicides, embalming methods, precautions for safety of public health, transportation of bodies, disinfection, etc. Practical operation on cadaver required if one is obtainable. Licenses renewable annually, expiring December 31

INTEREST—Legal rate, 8 per cent.

MISCELLANEOUS LAWS—Unlawful to embalm body when any fact within the knowledge or brought to the attention of the embalmer is sufficient to arouse suspicion of crime in cause of death, until permission of coroner, or justice of the peace (if there be no coroner available) obtained. Fine, \$25-\$100.

All licensed embalmers who are regularly engaged in the business of embalming shall be and they are exempted from jury service

TIME LIMITS ON SUITS.—Accounts, 10 years; notes, 10 years.

TRANSPORTATION REGULATIONS.—Shipping Pastors. All licensed embalmers shall use shipping pasters to be furnished by the State Board of Embalming and approved by the State Board of Health. No railroad, express company or common carrier shall accept for transportation any dead human body, unless such body is accompanied by said shipping paster properly filled out and signed

Embalmers must report or satisfactorily account for all yellow pasters which have been furnished them.

The text of rules and regulations governing the preparation and transportation of bodies will be found on the back of pasters above referred to, and in Section 11 in Part I of this book.

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